

1 UNITED STATES DISTRICT COURT
2 MIDDLE DISTRICT OF TENNESSEE
3 COOKEVILLE DIVISION

4 UNITED STATES OF AMERICA)
5 VS) No. 3:24-mj-1036
6 PAUL FAYE, SR.) 2:24-cr-0002

8 BEFORE THE HONORABLE JEFFERY S. FRENSLEY,
9 MAGISTRATE JUDGE

10 **TRANSCRIPT OF ELECTRONIC RECORDING**

11 February 12, 2024

12
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1
2 The above-styled cause came to be heard on
3 February 12, 2024, before the Hon. Jeffery S. Frensley,
4 Magistrate Judge, when the following proceedings were had
5 to-wit:

6 **TRANSCRIPT OF ELECTRONIC RECORDING**

7 ***

8
9 THE COURT: Good afternoon, everyone.
10 Welcome. We're here this afternoon in the matter of the
11 United States of America versus Paul Faye. It's Case
12 No. 24-mj-1036. Mr. Faye is present in court this
13 afternoon along with his attorney, Mr. Baker.
14 Mr. Kurtzman's here for the United States.

15 We've set the matter today for a preliminary
16 hearing and detention hearing. Mr. Kurtzman, is the
17 government ready to go forward and are there any
18 announcements before we get started?

19 MR. KURTZMAN: I don't think there's any
20 announcements, Your Honor. And we are ready to go
21 forward.

22 THE COURT: All right, very good.
23 Mr. Baker, are you ready and any
24 announcements?

25 MR. BAKER: We're ready, Your Honor. No

1 announcements.

2 THE COURT: All right. Very good.

3 Mr. Kurtzman, how you would like to proceed?

4 MR. KURTZMAN: Your Honor, the government
5 will call FBI Special Agent Chris Potts.

6 THE COURT: All right. Special Agent Potts,
7 if you'd step up and be sworn.

8 **CHRISTOPHER POTTS**

9 called as a witness, after having been first duly sworn,
10 testified as follows:

11 COURTROOM DEPUTY: Could you state your name
12 for the record and spell your last name.

13 THE WITNESS: Special Agent Christopher
14 Potts, P-o-t-t-s.

15 COURTROOM DEPUTY: Thank you so much.
16 Please have a seat.

17 THE COURT: You may ask.

18 **DIRECT EXAMINATION**

19 BY MR. KURTZMAN:

20 Q. Agent Potts, where are you currently
21 employed?

22 A. Currently employed with the FBI out of the
23 Memphis Field Office, Nashville Resident Agency.

24 Q. What's your role as an FBI agent?

25 A. I'm currently assigned to the Joint

1 Terrorism Task Force here in Nashville where part of my
2 responsibilities are to investigate federal criminal
3 violations revolving around terrorism or other -- other
4 acts involving firearms, criminal violations involving
5 firearms.

6 Q. Okay. And were you involved in the
7 investigation into Paul Faye?

8 A. Yes, I was.

9 Q. And have you reviewed the affidavit that was
10 signed by Agent DeFeo?

11 A. Yes, I have.

12 Q. Are you familiar with the facts in there?

13 A. Yes.

14 Q. And that familiarity comes from preparing
15 for this hearing, as well as your personal involvement in
16 the investigation?

17 A. Yes, that's correct.

18 Q. Can you adopt the statements contained in
19 Agent DeFeo's affidavit as your testimony here today?

20 A. Yes, I do.

21 Q. In the affidavit there was discussion of a
22 suppressor. Are you familiar with that portion of the
23 investigation?

24 A. Yes.

25 Q. Can you describe how -- can you describe

1 that portion of the investigation?

2 A. So in December -- well, I'm sorry. Let me
3 back up. In April of 2023, an FBI undercover had
4 conducted an in-person meeting with Mr. Faye. During
5 that -- during that meeting, the FBI undercover observed
6 a photograph of a suppressor attached or affixed to the
7 front end of a rifle on Mr. Faye's cell phone.

8 Then in December of 2023 Mr. Faye indicated
9 to the FBI undercover that he could and would provide the
10 suppressor to him at a later date. Then in January of
11 2024 Mr. Faye did sell the suppressor that we're
12 referring to to the FBI undercover for \$100.

13 Q. And did Mr. Faye ever state whether or not
14 there was a tax stamp on the suppressor?

15 A. He actually indicated that there was not a
16 tax stamp on the suppressor.

17 Q. Based on your knowledge and experience, what
18 did you conclude that Mr. Faye meant when he said there
19 wasn't a tax stamp on there?

20 A. Based on my training and experience,
21 Mr. Faye saying that there was not a tax stamp was him
22 alluding to the fact that it was not a known firearm or
23 suppressor that would have been required to be registered
24 on the National Firearms Registration and Transaction
25 Record or NFRTR, and that it would essentially be hidden

1 or secret from known -- being known to the US government.

2 Q. Okay. And so suppressors and other
3 particular weapons have to be registered on this NFRTR?

4 A. Yes, that's correct.

5 Q. And did -- you mentioned, was a search run
6 of Mr. Faye to see if he had any firearms on the National
7 Firearms Registration and Transfer Record?

8 A. Yes. The FBI on two occasions checked the
9 NFRTR to determine whether Mr. Faye had registered any
10 firearms or suppressors, and on both occasions those
11 checks came back negative. So he did not -- or had not
12 at the time, when the checks were made, registered any of
13 those.

14 Q. And that's a requirement to possess a
15 suppressor?

16 A. That's correct.

17 Q. I'm going to pass you what's been marked as
18 Government's Exhibit 1. Are you familiar with that
19 document?

20 A. Yes, I am.

21 Q. And, now, another report. You did not
22 personally prepare this report; correct?

23 A. No, I did not.

24 Q. Was the suppressor submitted to the ATF for
25 testing?

1 A. Yes, it was.

2 Q. And did they determine whether or not what
3 Mr. Faye transferred to that undercover FBI agent was, in
4 fact, a firearm suppressor?

5 A. Yes, based on the conclusion in this -- in
6 this report, they did determine that it was required to
7 be registered on the NS -- I'm sorry, the NFRTR.

8 MR. KURTZMAN: Your Honor, the government
9 would move to admit Exhibit 1 into evidence.

10 THE COURT: You've seen it, right,
11 Mr. Baker?

12 MR. BAKER: Yes, Your Honor.

13 THE COURT: It will be admitted.

14 (Government Exhibit No. 1 was admitted.)

15 BY MR. KURTZMAN:

16 Q. And in that document the ATF actually talks
17 about how they tested it to ensure that it did, in fact,
18 function as a suppressor?

19 A. Yes.

20 Q. I want to go back a little bit. How did --
21 were you also involved in an investigation involving
22 individuals that we'll just refer to right now as Perry
23 and Odell?

24 A. Yes, I was.

25 Q. Can you describe that investigation?

1 A. So Mr. -- Mr. Odell and Mr. Perry were both
2 FBI subjects. In October of 2022 -- I'm sorry -- yeah,
3 October of 2022, the FBI conducted a -- or executed a
4 search warrant at the residence belonging to Mr. Odell.
5 Mr. Perry, who was from the Clarksville, Tennessee, area
6 was also there at the time.

7 During the execution of that search warrant,
8 the two cell phones or -- or -- were -- basically were
9 taken or seized from that. And during the subsequent
10 review of Mr. Perry's cell phone, private social media
11 messages were observed between Mr. Perry and Mr. Faye.

12 Q. And what happened of significance during the
13 execution of that search warrant at -- did you say
14 Mr. Odell's home?

15 A. Yes, it was at Mr. Odell's home.

16 Q. What happened when the FBI approached
17 Mr. Odell's home?

18 A. So as the FBI agents approached the property
19 in order to execute that search warrant, Mr. Perry
20 exited -- well, at one point used a rifle to shoot
21 through the window of the residence at the FBI agents who
22 were coming onto the property and continued to do so and
23 shot multiple rounds at the agents.

24 Q. And how did Mr. Perry and Mr. Odell -- you
25 said they were FBI subjects. How did they come to the

1 FBI's attention prompting the investigation and the
2 search warrant you just described?

3 A. So initially the FBI observed -- observed
4 messages, threatening messages that would have been
5 posted on social media by Mr. Perry, indicating that he,
6 along with potentially others, intended to go down to the
7 US/Mexico border and possibly commit acts of violence
8 while they were there.

9 Q. Okay. And then you said once those phones
10 were searched after the execution of that search
11 warrant -- and the search of Mr. Odell's home -- you said
12 Mr. Perry is a Clarksville resident. Mr. Odell is a
13 resident of Missouri; is that right?

14 A. Yes, sir.

15 Q. Okay. During the course of the
16 investigation into Mr. Perry and Odell, did the FBI come
17 to believe that they were going to return to Tennessee
18 prior to going to the border?

19 A. Yeah. So the FBI had observed -- had
20 observed messages or indications that there were -- there
21 were more than just Mr. Odell and Mr. Perry who were part
22 of a group who intended to go down to the border. At the
23 time there was an unknown -- there was an unknown
24 individual or maybe possibly multiple individuals in
25 Tennessee who we didn't know the identity of. But upon

1 reviewing Mr. Perry's cell phone, that's when the FBI
2 became aware that Mr. Paul Faye was at least one of the
3 members in Tennessee who was part of that group.

4 Q. And during the search of that phone, did the
5 FBI recover evidence that Mr. Perry and Odell had
6 actually met Mr. Faye at his property?

7 A. Yes, there were -- on at least one occasion
8 they had met -- met here in Tennessee.

9 Q. Okay. And you said that Perry and Odell
10 were planning to commit acts of violence at the border.
11 Who specifically -- or what groups of people did they
12 plan to target if they had made it to the border?

13 A. They had expressed plans to possibly commit
14 acts of violence towards migrants who were crossing the
15 border in from Mexico.

16 Q. Was there a discussion of targeting law
17 enforcement as well?

18 A. Yes, there were. Border Patrol or other
19 federal officials in particular.

20 Q. And then once Faye was identified through
21 the search of Mr. Perry and Odell's phone, what did the
22 FBI do to attempt to determine whether he was, in fact,
23 involved with that plan or was planning on committing
24 acts of violence?

25 A. So in March of 2023, the FBI introduced an

1 undercover employee to Mr. Faye via TikTok. The
2 communications occurred there for a period of time, and
3 then at some -- at one point Mr. Faye provided his
4 personal cell phone number to the FBI undercover. And
5 then in April of 2023 the FBI's undercover started --
6 started having in-person meetings and continuing phone
7 conversations with Mr. Faye.

8 Q. Okay. And it's referenced in the criminal
9 complaint, but do you recall the undercover reporting
10 that Mr. Faye said to him that once they got to the
11 border that he would be able to find some tactical gear
12 lying around on the ground?

13 A. Yes.

14 Q. Okay. And what did you as an FBI agent,
15 what did that lead you to think he was talking about?

16 A. So based on my training and experience, it
17 was -- it was likely that that gear would have belonged
18 to somebody else at some point, possibly deceased
19 individuals who had been killed during some type of
20 confrontation.

21 Q. And gear, he was talking about tactical
22 vests and other things that would be useful --

23 A. Right.

24 Q. -- is that correct?

25 A. Yes.

1 Q. In August of 2023, the undercover relayed --
2 and it's included in the complaint which you said you're
3 familiar with, that Mr. Faye said he was gathering things
4 that go boom, boom, boom. Do you recall seeing that?

5 A. Yes, I do.

6 Q. And based on your experience as an FBI
7 agent, what did you conclude after you saw that?

8 A. Based on my experience, I concluded that he
9 was talking about either explosives of some type or
10 bullets that were being shot from a gun.

11 Q. And in November of last year, are you
12 familiar with the defendant informing the undercover
13 about his communications with a man by the name of Greg
14 Gibson?

15 A. Yes.

16 Q. Can you describe that?

17 A. So there was a conversation with Mr. Gibson
18 at some point.

19 Q. And who is Mr. Gibson?

20 A. Mr. Gibson resides in North Carolina.

21 Q. And what were -- not exactly, but what were
22 the discussions between Mr. Gibson and Mr. Faye about?

23 A. So they discussed travel down to the
24 US/Mexico border as well.

25 Q. And was Mr. Gibson attempting to organize

1 individuals to go to the border?

2 A. Yes, he was. There were reports at one
3 point that a large amount of individuals were part of a
4 group who were planning on going down to the border.

5 Q. Are you familiar with a multistate meeting
6 of individuals organized by Mr. Gibson?

7 A. No, I can't -- I can't say I am.

8 Q. Okay. Did you review the recorded
9 conversation between Mr. Faye and the undercover from
10 December 14 of 2023?

11 A. Yes, I did.

12 Q. And what were the contents of that
13 communication between Mr. Faye and the undercover?

14 A. So in that December 2023 recorded
15 conversation, Mr. Faye indicated that -- that he, as part
16 of his group, that he kind of likened himself to be --
17 have a sniper role based on a specific skill set that he
18 had.

19 Q. And did he indicate whether or not he
20 planned on shooting individuals when they got to the
21 border?

22 A. Yes, he -- he -- in his -- in his way of
23 thinking, it was that he envisioned being on a rooftop
24 someplace and kind of in an overwatch sort of situation
25 where he could take out anybody -- any potential threats

1 or individuals that would be in an area and kind of
2 protect -- provide protection for his group before they
3 stepped foot into the area.

4 Q. And do you recall Mr. Faye mentioning
5 Tannerite and Claymore mines during that conversation?

6 A. Yes.

7 Q. And what was the discussion involving about
8 with Tannerite and Claymore mines?

9 A. The discussion just said that there were --
10 they had access to Tannerite or someone had access to
11 Tannerite or Claymore mines, that could be used as well.

12 Q. And what do you understand a Claymore mine
13 to be?

14 A. Claymore mine would be used as an explosive
15 to potentially injure or kill, you know, a group of
16 people or an individual at the same time.

17 Q. And then you already mentioned that the
18 suppressor/silencer was exchanged on January 11, 2024?

19 A. Yes.

20 Q. And are you familiar with Mr. Faye's vehicle
21 situation in January of 2024?

22 A. Yes.

23 Q. What was that situation?

24 A. So I'm aware that he had been in some kind
25 of a vehicle accident to the point where his truck was

1 not operable at the time, so he didn't have -- he was
2 driving a rental car.

3 Q. And did Mr. Faye indicate to the undercover
4 or anyone else that once his vehicle was fixed he planned
5 to travel to the border?

6 A. Yes. He said he was waiting for the truck
7 to be fixed so that then he could go so he could carry
8 his stuff.

9 Q. Because he -- did he indicate whether or not
10 he planned to take firearms or anything else to the
11 border?

12 A. Yes.

13 Q. What did he indicate that he was going to
14 take?

15 A. That he would take firearms, ammunition and
16 other tactical gear.

17 Q. Pass you Government's Exhibit 2. Are you
18 familiar with the line sheet from January 22 of 2024?

19 A. Yes, I am.

20 Q. And have you reviewed that in preparation
21 for your testimony here today?

22 A. Yes.

23 MR. KURTZMAN: Your Honor, the government
24 would move to admit Exhibit 2.

25 THE COURT: It will be admitted.

1 (Government Exhibit No. 2 was admitted under
2 seal.)

3 BY MR. KURTZMAN:

4 Q. Agent Potts, I'd like you to turn to page 3,
5 the top of page 3, and read those first two text
6 messages.

7 A. All right. Top of page 3 says: Hey, buddy,
8 sorry for the late response. The feds have me absolutely
9 smoothed. If we had a few thousand, we could make a
10 stand, hold them back for the moment.

11 The second message says: Calling our
12 contact from Texas Rangers and the Maverick County
13 Sheriff's Office tomorrow to see if we can get a sitdown.
14 If not, we will likely have to fall back.

15 Q. And do you know who the text messages -- the
16 text messages from Mr. -- with Mr. Faye are with in these
17 two instances?

18 A. Off the top of my head, I don't. I do not
19 know. I have to review the phone number.

20 Q. In January of 2024, do you know whether or
21 not Greg Gibson actually went to the US/Mexico border?

22 A. He did go to the US/Mexico border.

23 Q. Okay. And as you continue through that,
24 have you reviewed the phone call that is summarized
25 beginning on page 19 and continuing on through page 23?

1 A. Yes, I have.

2 Q. And have you actually had a chance to listen
3 to that as well?

4 A. Yes.

5 MR. KURTZMAN: Your Honor, the government
6 would move to admit Exhibit No. 3 into the record, which
7 is a recording. I've got a copy on disk here for the
8 Court.

9 THE COURT: All right.

10 (Government Exhibit No. 3 was admitted.)

11 BY MR. KURTZMAN:

12 Q. (Playing audio.)

13 Agent Potts, are you aware of whether or not
14 the FBI had physical surveillance of Mr. Faye on
15 January 22, 2024?

16 A. Yeah. The FBI did not have surveillance on
17 him that day up there.

18 Q. (Playing audio.)

19 Agent Potts, during that recording Mr. Faye
20 is talking about being in communication with a Greg. Do
21 you assume that is Greg Gibson?

22 A. Yes.

23 Q. (Playing audio.)

24 Agent Potts, when Mr. Faye says he's going
25 to put them down, did you -- what did you conclude or who

1 did you conclude that he was talking about in that
2 statement?

3 A. My conclusion was that he intended to kill
4 the FBI agents that were going to come for him.

5 Q. (Playing audio.)

6 Agent Potts, during the investigation, do
7 you know whether or not after Perry and Odell were
8 arrested whether or not Mr. Faye continued to communicate
9 with either of them?

10 A. Yes, I know there was some jail calls that
11 were -- we reviewed between Mr. Perry and Mr. Faye.

12 Q. And in that -- in those jail calls, did
13 Mr. Perry and Mr. Faye discuss whether they thought
14 someone had been involved in turning -- getting them
15 turned in?

16 A. Yes, I think so.

17 Q. Okay. Did they conclude that Mr. Odell was
18 a federal agent in the beginning?

19 A. Yes, they thought so.

20 Q. And he was not a federal agent; correct?

21 A. No, he wasn't.

22 Q. Okay. Agent Potts, the call we just
23 listened to occurred on January 22 of this year. Did the
24 FBI begin making plans to arrest Mr. Faye after that?

25 A. Yes, we did.

1 Q. And why at that point did the FBI say that
2 they -- it was time to make an arrest?

3 A. Just based on a call like we just listened
4 to, it seemed like the -- his -- the rhetoric coming from
5 Mr. Faye in terms of what his plans and potential violent
6 actions that might occur, whether it be at the border or
7 to federal agents, that things had changed a little bit
8 and maybe now it was time to take down the investigation.

9 Q. And where did the FBI eventually arrest the
10 defendant?

11 A. We arrested him at the Davidson County
12 courthouse on February 5.

13 Q. How did you come to -- how did the FBI know
14 that he would be there that day?

15 A. We knew that -- actually, he had mentioned
16 it on multiple calls and also we checked with the county
17 courthouse and found out that he had a state court
18 hearing that day.

19 Q. Okay. And why did the FBI decide to arrest
20 him that way rather than go to his property?

21 A. Yeah. So based on the things that he said,
22 like, in the call, from an officer safety perspective, it
23 made more sense to -- to arrest him after he had gone
24 through a metal detector when he went in for his hearing
25 so we knew he wouldn't have any weapons on him. Based on

1 some of the things that he said to the FBI undercover,
2 just indicating that he would not be peaceful towards FBI
3 agents when we approached him at his house.

4 Q. And he had a number of firearms at his
5 house; correct?

6 A. Yes, he did.

7 Q. And that was -- was a search warrant done of
8 his house?

9 A. Yes.

10 Q. Did that search warrant lead to the recovery
11 of numerous firearms?

12 A. Yes, it did.

13 Q. Did it lead to the recovery of rifle scopes
14 used for long-range shooting?

15 A. Yes, there were a couple.

16 MR. KURTZMAN: No further questions.

17 MR. BAKER: One moment please, Your Honor.

18 **CROSS-EXAMINATION**

19 BY MR. BAKER:

20 Q. Good afternoon, Agent Potts.

21 A. Good afternoon.

22 Q. Nice to see you.

23 THE COURT: Mr. Baker, there's also a notch
24 on the left-hand side, make it --

25 MR. BAKER: Maybe it will be stable. There

1 we go. Thank you, Your Honor.

2 THE COURT: You're welcome.

3 BY MR. BAKER:

4 Q. Okay, Agent Potts. I have a few questions
5 for you. What was your personal involvement in this
6 case?

7 A. I assisted as a co-case agent.

8 Q. Well, when did you first get involved in the
9 case?

10 A. In general from the very beginning.

11 Q. Okay. So would that be in March of 2023?

12 A. Yes.

13 Q. Okay. You were not involved in the case
14 prior to that; right?

15 A. I was involved in an investigation involving
16 Mr. Perry.

17 Q. Oh, you were. Okay.

18 A. Yeah.

19 Q. So Mr. Perry was arrested in October of
20 2022; correct?

21 A. Yes.

22 Q. Okay. So that is at least six months prior
23 to your investigation of Mr. Faye; is that right?

24 A. Approximately, yeah.

25 Q. Okay. Was it around March when it was

1 discovered that Mr. Perry had had communications with
2 Mr. Faye?

3 A. I believe that the review of the phones,
4 which were seized during that search warrant happened
5 earlier than that.

6 Q. Okay. Well, why was the investigation not
7 started into Mr. Faye until March then?

8 A. The way I understand it, like, it does take
9 time to properly identify who Mr. Faye was, so there
10 was -- certain checks were -- needed to be made so we
11 could properly identify the right person to make sure we
12 weren't opening an investigation on the wrong individual.

13 Q. Okay. Now, Paul Faye is from Tennessee;
14 correct?

15 A. I don't think he's from Tennessee. That's
16 where he was resided when the investigation opened.

17 Q. He'd lived in Tennessee at that point?

18 A. Yes.

19 Q. Okay. But he's arrested and charged in the
20 Western District of Missouri.

21 A. Mr. Faye?

22 Q. I mean -- I'm sorry. Is Mr. Perry from
23 Tennessee?

24 A. I don't know if he's from Tennessee, but he
25 was residing in the Tennessee area when we first became

1 aware of him, yeah.

2 Q. Okay. So Mr. Perry -- I may have said Faye.
3 Mr. Perry is charged in the Western District of Missouri?

4 A. Yes.

5 Q. Along with another individual?

6 A. Correct.

7 Q. Okay. You said that Perry came a couple of
8 times to visit with Mr. Faye? Or one time?

9 A. I know that Mr. Odell came at least once and
10 met with Mr. Perry and Mr. Faye while they were here in
11 Tennessee.

12 Q. Okay. And Mr. Odell is the one charged with
13 Perry in Missouri?

14 A. That's correct.

15 Q. Now, is there any recording or proof about
16 what happened in the meetings between -- or the meeting
17 between Mr. Perry and Mr. Odell and Mr. Faye?

18 A. The FBI was not recording conversations
19 during those -- during that time.

20 Q. So we don't know what transpired between
21 them?

22 A. No, not -- not from my -- my awareness.

23 Q. Has Perry or Odell given a statement as to
24 what happened in those meetings?

25 A. So the FBI was aware that there was another

1 individual from Tennessee that Mr. Perry and Mr. Odell --
2 who -- that they were going to meet up with to go down to
3 the border. At that time in October of 2022 and the
4 summer of 2022 we didn't know who that -- who that
5 individual was or who -- maybe if there were multiple
6 individuals.

7 Q. How do you know they were going to meet up
8 to go to the border then?

9 A. Based on -- it was based on commentary that
10 were made on social media and through source reporting.

11 Q. By who? Who made the commentary on social
12 media that Mr. Faye --

13 A. Mr. Perry, a review of his TikTok messages
14 and videos that he posted on TikTok.

15 Q. Did he say Mr. Faye was going to the border
16 with him in those messages?

17 A. No.

18 Q. Okay. He said he was going to the border.

19 A. He said he had a group --

20 Q. Okay.

21 A. -- of people.

22 Q. Did he identify who was in the group?

23 A. Not in those -- in those messages but that
24 they were part of a group called the Second American
25 Militia.

1 Q. What more do you know about the Second
2 American Militia?

3 A. So that they're a loosely affiliated group
4 of individuals that Mr. Odell, Mr. Perry and Mr. Faye was
5 a part of.

6 Q. What is your source of information that
7 Mr. Faye was a part of that?

8 A. That -- I know that he had -- I conducted an
9 interview of Mr. Faye when he was arrested. During
10 that -- during that interview he indicated that his --
11 that Mr. Perry, whom he had met with, provided him with a
12 patch that was for that -- for that group.

13 Q. He told you that on the day of his arrest?

14 A. Yes.

15 Q. Okay. Did you write a report that
16 summarizes that?

17 A. I co-authored a report.

18 MR. BAKER: Do you have that report, Josh?

19 MR. KURTZMAN: (indiscernible).

20 MR. BAKER: Okay.

21 BY MR. BAKER:

22 Q. So what did he tell you on the day of his
23 arrest about Perry?

24 A. He said that he had met with -- that he
25 knew -- he knew who Bryan was. I don't think -- at the

1 time during the interview, he said he didn't know any
2 last names, but that there was an individual named Bryan
3 who I took to mean Bryan Perry. And that Bryan had made
4 a patch and had given him one as part of -- as part of
5 the -- as part of the group.

6 Q. Okay. Well, did he also tell you that they
7 told Bryan Perry to stay away from their meetings?

8 A. That didn't come up, no.

9 Q. Were you aware that Mr. Faye and his sons
10 and others had a group that would meet to go camping and
11 shoot firearms and talk about basically survivalist
12 stuff, how we would live off the land if there was some
13 type of war or problem that went on?

14 A. No.

15 Q. You haven't heard about that?

16 A. No.

17 Q. Have you interviewed his sons?

18 A. I personally have not.

19 Q. Have anybody else in the government
20 interviewed his sons?

21 A. I think there was some conversation between
22 the sons and the agent during the execution of the search
23 warrant at Mr. Faye's property.

24 Q. Okay. Now, you talked about the -- what's
25 being called a suppressor that you testified that

1 Mr. Faye sold to an agent. You weren't present for that;
2 correct?

3 A. I was not.

4 Q. In fact, you're not present for any of the
5 meetings and conversations that are described in the
6 complaint?

7 A. Correct.

8 Q. This was prepared by another agent, so you
9 weren't there for any of this stuff?

10 A. No, I wasn't.

11 Q. So you don't have any way of personally
12 knowing whether this stuff is accurate?

13 A. No.

14 Q. Were you -- did you learn that both Mr. Faye
15 and his son told Bryan Perry that he wasn't welcome, that
16 he should get out of there?

17 A. No, I was not aware of that --

18 Q. You're not aware of that?

19 A. -- conversation occurring.

20 Q. With regard to the suppressor, isn't it true
21 that the agent repeatedly asked Mr. Faye to get him such
22 an item before an item was provided to him?

23 A. I know that -- I know there were
24 conversations, but the initial conversation about the
25 suppressor occurred when Mr. Faye showed the undercover

1 employee a picture of that suppressor on a rifle.

2 Q. And so did -- was the agent able to capture
3 a screenshot of that picture?

4 A. Realtime, I don't think so.

5 Q. Has it been recovered since the execution of
6 the search warrant or from his telephone?

7 A. The picture --

8 Q. Yes.

9 A. -- that you're referring to?

10 Q. Yes.

11 A. I'm not sure, actually.

12 Q. All right. The FBI has his telephone;
13 correct?

14 A. Yes.

15 Q. And I'm sure that a search warrant will be
16 obtained or has been obtained to search that telephone?

17 A. Yes.

18 Q. Has it -- has the phone been searched yet?

19 A. Yes.

20 Q. Did they -- did the agents find a picture of
21 the suppressor that's described in the complaint?

22 A. I don't know.

23 Q. You would agree that there has been a
24 tremendous amount of publicity in the news media
25 concerning the things that are going on at the southern

1 border; correct?

2 A. I've seen some news reports about it, yes.

3 Q. And it's very controversial. Have you seen
4 news reports about this very case, in fact?

5 A. No, I've --

6 Q. Okay.

7 A. -- intentionally not observed or read those
8 articles.

9 Q. You're aware that politicians in the
10 United States, particularly members of the Republican
11 party and in Texas, are constantly saying that we are
12 being invaded by migrants from the southern border;
13 correct?

14 MR. KURTZMAN: Your Honor, I'm going to
15 object to relevancy here.

16 MR. BAKER: It goes to my client's mental
17 state, Your Honor, and his risk of dangerousness.

18 THE COURT: Overruled. He can answer.

19 BY MR. BAKER:

20 Q. So you're aware that politicians are saying
21 that there is an invasion of our country and that the
22 state of Texas has got to not follow the Supreme Court
23 and federal law and keep that razor wire down there.
24 That's being stated regularly on Fox News, News Max and
25 other news organizations are promoting this idea;

1 correct?

2 A. Yes, I've seen that.

3 Q. Do you think that people who perhaps have
4 mental health issues could be subject to becoming very
5 upset about hearing an invasion of their own country?

6 MR. KURTZMAN: Your Honor, I'm going to
7 object. That's beyond Mr. Potts -- or Agent Potts'
8 expertise to talk about what mental health may or may not
9 cause someone to do.

10 THE COURT: Yeah, I think it's a little far
11 afield.

12 MR. BAKER: Okay.

13 BY MR. BAKER:

14 Q. Let's talk about -- so you've been
15 investigating Mr. Faye since at least March 2023?

16 A. Correct.

17 Q. So you're aware that he was committed to a
18 mental hospital in November?

19 A. I've not seen any reports about that.

20 Q. You're not aware of that?

21 THE COURT: When was that, Mr. Baker?

22 MR. BAKER: November.

23 THE COURT: Of?

24 MR. BAKER: 2023.

25 THE COURT: Okay.

1 BY MR. BAKER:

2 Q. So you guys didn't have eyes on Mr. Faye
3 every day, did you?

4 A. No.

5 Q. And, in fact, this black SUV that he thought
6 was surveilling him that we -- that you testified about
7 earlier back in January, the government didn't have an
8 SUV out there watching him, did they?

9 A. Not at that time, no.

10 Q. So either it was somebody else or maybe
11 Mr. Faye was delusional; would that be fair?

12 A. It could have been someone else, but I can't
13 speak to his mindset.

14 MR. BAKER: May I have just a second,
15 Your Honor.

16 THE COURT: You may.

17 BY MR. BAKER:

18 Q. Agent Potts, you're interpreting words that
19 Mr. Faye has said based on your experience I think you
20 said. So, for example, earlier when you testified that
21 they could pick some up off the ground, that that might
22 mean there's dead bodies, something along those lines?

23 A. Uh-huh (affirmative).

24 Q. Okay. So it would be fair to say that when
25 someone speaks words, we have to try to determine what

1 they mean by then; right?

2 A. Yeah.

3 Q. As part of your investigation, that's what
4 you're trying to do, you're trying to see if he's using
5 coded words to suggest that they're really going to go to
6 Texas and shoot agents and immigrants at the border;
7 right?

8 A. Right.

9 Q. Now, wouldn't you want to know if a person
10 had mental health problems? In other words, delusional.
11 Would that be something you'd be interested in as an
12 agent in knowing?

13 A. I would only -- I would -- if I'm conducting
14 an investigation, I'm going to stick to the facts of what
15 an individual says and what that individual's actions
16 show.

17 Q. Okay.

18 A. Whether or not that individual has a -- has
19 a mental health issue, that doesn't -- people commit
20 federal crimes regardless of whether they have mental
21 health conditions -- or might commit a federal crime
22 regardless of their health status, so.

23 Q. So you don't really want to know whether
24 they have mental health issues?

25 A. It might be a data point, but it's not

1 something that I seek out as part of conducting an
2 investigation.

3 Q. It might -- it might show you something
4 about a person's intent about whether they really intend
5 to carry out some type of threatening action based on
6 words that they've said; correct?

7 A. I don't know. I'm not -- I'm not a -- I'm
8 not a physician that can diagnose whether or not --

9 Q. Okay.

10 A. -- an individual would be more or less
11 likely to commit an act because of a mental health
12 status.

13 Q. Would you be interested to know that a
14 mental health professional has diagnosed him with having
15 delusional thoughts?

16 A. Sure. Okay.

17 Q. And I'm sure you'd also want to know that
18 his delusions are paranoid and persecutory in nature,
19 according to mental health professionals; correct? You'd
20 want to know about that?

21 A. (speaking at the same time).

22 Q. If that's true, that's something that might
23 have some influence on what the person -- what the
24 person's words mean, right, and whether those are
25 accurate?

1 A. Okay. It might, yeah.

2 Q. Okay. In the -- in the recording that we
3 heard, the undercover agent, when he's talking to
4 Mr. Faye about the border, he's -- well, first of all,
5 what -- what tactics did they use to befriend Mr. Faye?
6 Certainly they didn't say, hey, we're from the
7 government. They pretended to be somebody. Who did they
8 pretend to be?

9 A. Just a like-minded individual, you know, who
10 reached out on social media.

11 Q. Okay. And he met the agent on TikTok; is
12 that right?

13 A. That was where the initial introduction
14 occurred, yes.

15 Q. Did the agent, in order to get Mr. Faye to
16 go along with this, call him repeatedly, sometimes 20 and
17 30 times a day?

18 A. I'm not aware of that many calls having
19 occurred.

20 Q. Did they make suggestions to him when he
21 would say he didn't want to talk about the border, did
22 they repeatedly bring up the border to try to get him to
23 talk about it?

24 A. I don't know if they -- if they tried to get
25 him to talk about it, but in their role as an undercover

1 employee who had -- who had befriended Mr. Faye online
2 for a specific reason, based on our investigation, it
3 would be natural for them to talk about the things that
4 Mr. Faye was interested in, including the original reason
5 for their -- for their initial contact.

6 Q. Okay. Did they give him gifts such as Don't
7 Tread on Me flag, a Second Amendment patch, food?

8 A. I know that they brought him some food when
9 he was sick. I think they -- I think they brought him
10 some soup or something like that.

11 Q. In fact, on that day they called him before
12 they went to his house, and he told them don't come over,
13 I'm sick, but they went anyway; correct?

14 A. I think that -- if I recall, that was part
15 of it.

16 Q. Tannerite is -- what is Tannerite?

17 A. I've never used it before, but it's a --
18 it's a very mild explosive that can -- farmers use it to
19 blow up stumps and things like that.

20 Q. You can legally buy it?

21 A. Yes.

22 Q. And the Tannerite that was recovered during
23 the search warrant was unopened, I understand?

24 A. That I don't know.

25 Q. But it's a legal substance that you can buy

1 at many different stores?

2 A. That's correct.

3 Q. People use it for target practice, don't
4 they?

5 A. I have heard of people shooting it before.

6 Q. Okay. I think you can do a quick Google
7 search and see people using it for target practice.

8 A. Okay.

9 Q. Now, the complaint says that Mr. Faye
10 allegedly told this undercover agent that he stationed
11 butane tanks around his property so that in the event law
12 enforcement arrived he could use the tanks as a booby
13 trap explosive device. That's on page -- paragraph 15 of
14 the complaint. How many butane tanks were out there?

15 A. I don't know how many were recovered, if
16 there were --

17 Q. All right. Well, isn't the reality, Agent,
18 is they're not butane tanks, they're propane tanks?

19 A. There are -- there are both. There are two
20 kinds. I mean, there are tanks for butane, as far as I
21 know.

22 Q. Have you seen a photograph of the butane
23 tanks?

24 A. No.

25 Q. Have you seen a photograph of the propane

1 tanks?

2 A. No.

3 Q. Is it possible that this complaint has a
4 mistake and the butane really should be propane?

5 A. I can't say that. I don't know what -- how
6 that information was reported from the initial subject.
7 As far as the case, I don't know.

8 Q. Well, how in the world, if it was a propane
9 tank, would it be used as a booby trap explosive device
10 or converted into a Claymore mine? How would that work?

11 A. So I'm not a -- I'm not a bomb tech. But I
12 think there is a -- there is a misconception that you
13 can't do that. I don't know if you can just shoot a
14 propane tank and just blow it up. I assume -- actually,
15 I don't want to assume. I don't know if that --

16 Q. You don't know.

17 A. -- if you can do that. But I'm sure that
18 they can be (indiscernible) fashioned in a way that
19 might -- a booby trap might happen.

20 Q. A Claymore mine is something used by the
21 military; correct?

22 A. Yes.

23 Q. So this undercover is claiming that Mr. Faye
24 said something about that somehow that Tannerite could be
25 converted into a Claymore mine, which discharges steel

1 fragments. But isn't it true that Mr. Faye had propane
2 tanks, the kind you get at the convenience store to hook
3 up to your grill that have the little dial on top?

4 MR. KURTZMAN: Your Honor, I'm going to
5 object. It's been asked about three times. I think it's
6 pretty clear Agent Potts wasn't there at the search
7 warrant.

8 THE COURT: Are you going to clear that up?
9 Because you got him to adopt this statement and it's in
10 the statement, so.

11 BY MR. BAKER:

12 Q. The reality is --

13 THE COURT: If you want to clear it up, I'll
14 let you clear it. But if you're not going to clear it
15 up, then he's said this is his testimony, he's got an
16 opportunity to ask him about it.

17 MR. KURTZMAN: I agree, Your Honor. I think
18 he's just asked him about it three times.

19 THE COURT: I'll let you go a little bit
20 further if you need to, Mr. Baker.

21 MR. BAKER: Thank you, Your Honor.

22 BY MR. BAKER:

23 Q. You don't know anything about these propane
24 tanks or butane tanks or Tannerite, other than what's in
25 paragraph 15 and footnotes 1 and 8 of this complaint;

1 correct?

2 A. That's correct. I was not there.

3 Q. All right. Didn't Mr. Faye tell you that
4 the only group that he wanted on his property were people
5 who wanted to shoot and hunt and fish and camp and learn
6 how to live off the land?

7 A. He did talk about that, yeah.

8 Q. In case there's a zombie apocalypse or
9 something. You-all talked about that?

10 A. Zombies did not come up, but...

11 Q. Okay. What did you talk about along those
12 lines?

13 A. Just that he had -- he had met up with
14 people in the past in order to talk about
15 survival-related skills.

16 Q. And that's not illegal, is it?

17 A. No.

18 Q. Have you ever heard the song "Country Boy
19 Can Survive" by Hank Jr.?

20 A. Yes.

21 Q. Pretty much expresses those same sentiments,
22 doesn't it?

23 A. Sure.

24 Q. Did the agent record the meeting where the
25 hundred dollars -- where the suppressor was supposedly

1 sold to him for a hundred dollars?

2 A. I don't know.

3 Q. Okay. Did the agent tell you that Mr. Faye
4 didn't ask for money and the agent said, oh, I'd feel bad
5 if you don't take this money?

6 A. No, it was not --

7 Q. That wasn't really a sale, he was just going
8 to give it to him.

9 A. It was not relayed to me that that's how
10 that occurred.

11 Q. Okay.

12 A. That's what Mr. Faye told me during the
13 interview.

14 Q. Okay. So when was this interview you had
15 with Mr. Faye?

16 A. Post arrest. At the -- on February 5 after
17 he was arrested.

18 Q. And you've written a report about that?

19 A. Yes, I co-authored a report.

20 Q. Who else wrote it with you?

21 A. Another special agent.

22 Q. Okay. He was present during the statement?

23 A. Yes, he was.

24 Q. Okay. During that -- during his interview,
25 he repeatedly told you, did he not, that he didn't have

1 any plans to go shoot anybody at the border and wouldn't
2 do that?

3 A. He did.

4 Q. Okay. Do you believe him?

5 A. Based on the investigation that we
6 conducted, no.

7 Q. Okay. Has Mr. Faye ever hurt anyone, to
8 your knowledge?

9 A. I didn't hear you.

10 Q. Has Mr. Faye ever hurt anyone to your
11 knowledge?

12 A. Hurt anyone?

13 Q. Hurt anyone.

14 A. Not to my knowledge.

15 Q. Has he ever been arrested?

16 A. I think I remember there being an arrest
17 for -- might have been a traffic -- traffic-related
18 thing, DUI. I'm not exactly sure, but I -- it was a
19 while ago, I believe.

20 Q. You would agree with me that he has no
21 significant criminal record whatsoever?

22 A. Right. Yeah.

23 Q. In the last two, three, four years has he
24 been to Texas?

25 A. Not that I know of.

1 Q. Are you aware of him going to any of these
2 other states to try to, quote, recruit people?

3 A. No.

4 Q. Are you aware of Mr. Faye ever shooting at
5 anyone?

6 A. I'm not aware of that happening.

7 MR. BAKER: Your Honor, just a moment,
8 please.

9 BY MR. BAKER:

10 Q. Were the butane and/or propane tanks
11 recovered from the property? Were they seized?

12 A. The FBI did not seize any tanks.

13 MR. BAKER: Okay. That's all, Your Honor.

14 THE COURT: Redirect, Mr. Kurtzman.

15 **REDIRECT EXAMINATION**

16 BY MR. KURTZMAN:

17 Q. Agent Potts, in the investigation into
18 Mr. Perry and Odell, was an undercover employee of the
19 FBI used in that investigation as well?

20 A. Yes.

21 Q. Okay. Was that the same undercover employee
22 that was used in the investigation of Mr. Faye?

23 A. Yes, it was.

24 Q. And so that individual introduced himself to
25 Mr. Perry and Odell in the same sort of form or function

1 that he did with Mr. Perry and Odell?

2 A. That's correct.

3 Q. And I know you weren't out at the search
4 warrant. Do you know whether or not a Second American
5 Militia patch was recovered during the execution of the
6 search warrant. If you don't know, that's fine.

7 A. Yeah, I can't recall if there was or not.

8 MR. KURTZMAN: No further questions,
9 Your Honor.

10 THE COURT: I wanted to ask a couple of
11 questions. Your testimony, you talked about this
12 Mr. Gibson and Mr. Gibson was trying to organize people
13 to go to the border. When was that occurring?

14 THE WITNESS: So, Your Honor, that was
15 occurring within -- in the January -- December, January
16 timeframe from what I can recall.

17 THE COURT: 2023-2024?

18 THE WITNESS: Yes, sir.

19 THE COURT: You said, I think, that
20 Mr. Gibson did, in fact, go to the border in January of
21 2024?

22 THE WITNESS: Yes.

23 THE COURT: Was he arrested?

24 THE WITNESS: He was not.

25 THE COURT: Has he been charged with

1 anything related to that?

2 THE WITNESS: No. There was another
3 individual from a different state that was -- that came
4 down at the same time. He was arrested for having -- for
5 illegally possessing a firearm while he was there, but
6 Mr. Gibson has not been charged.

7 THE COURT: Was there law enforcement
8 encounter with Mr. Gibson at that time?

9 THE WITNESS: Yes, I believe that DPS,
10 Department of Public Safety for State of Texas had an
11 interaction with him and it wasn't -- wasn't -- not that
12 I'm aware of, it wasn't at our request. But they
13 typically do, from what I understand, have interactions
14 with anyone who does come down to the border.

15 THE COURT: Okay. All right. And you said
16 that after this communication between Mr. Faye and the
17 confidential agent that -- January 23 that you decided to
18 make an arrest at that time based on the rhetoric that
19 Mr. Faye was using at the time. Tell me what was
20 different and how it was different at that time compared
21 to the, you know, nine months or so that you'd already
22 had Mr. Faye as a target.

23 THE WITNESS: So he was -- so we noticed
24 just as in the -- as in the call that we heard, you know,
25 just him, you know -- there's a couple things. A, being

1 potentially -- getting -- you know, seeing the federal --
2 the SUV out front, him threatening through those --
3 through that commentary about saying that he was, you
4 know, going to take out agents if they ever came for him,
5 that he was ready.

6 His -- the fact that he had his -- he was
7 waiting for his truck to be done and completed, the work
8 on it being completed. He kept saying that once that
9 truck was done that he was going to now be ready to go
10 down to the border. You know, those two things, I think,
11 is what -- like, what led us as the FBI to say, okay, if
12 the truck is about to be done -- we were aware that the
13 truck was in the shop and was aware that it was going to
14 be done within -- potentially, you know, a few days or to
15 a week.

16 So we decided after knowing that he was
17 going to have that court date, that that would probably
18 be a good safe opportunity to make the arrest based on
19 the -- on the firearms charge.

20 THE COURT: In terms of his discussion about
21 what I'll call the underlying issue, the concerns about
22 the border, that wasn't different. It was this belief
23 that somebody was watching him and more immediate plans
24 to take action, is that what I'm hearing you say?

25 THE WITNESS: Yes.

1 THE COURT: Okay. And you mentioned that he
2 was arrested at the Davidson County courthouse. What
3 was -- what was he there for? What were the proceedings
4 that he was in court for?

5 THE WITNESS: So the accident where his
6 truck had to go into the shop --

7 THE COURT: Uh-huh (affirmative).

8 THE WITNESS: -- he was there related to --
9 to serve as a witness for the State, for their case on
10 the driver of the vehicle that hit him.

11 THE COURT: I see, okay. And when this
12 search warrant was executed at Mr. Faye's residence,
13 there's been a little bit of discussion about the
14 execution of that warrant. I understand you weren't
15 there; right?

16 THE WITNESS: That's correct.

17 THE COURT: Okay. And in response to
18 Mr. Kurtzman's questions, you indicated there was some --
19 some weapons discovered; correct?

20 THE WITNESS: Yes.

21 THE COURT: Firearms?

22 THE WITNESS: Yes.

23 THE COURT: Other types of weapons?

24 THE WITNESS: There were firearms, two -- I
25 think there were two scopes, and there was also another

1 suppressor -- they were all located within a cabinet of
2 sorts.

3 THE COURT: Okay. I assume that the other
4 suppressor was illegal for him to possess as well or have
5 you made a determination about that suppressor?

6 THE WITNESS: I think -- if I remember
7 correctly, a determination was made by an on-site member
8 who had the ability from the ATF to make those decisions.
9 And I think that it was, but I can't recall.

10 THE COURT: You think it was illegal or was
11 legal?

12 THE WITNESS: It was illegal.

13 THE COURT: Illegal.

14 THE WITNESS: But I can't -- I have not seen
15 a report. It hasn't been --

16 THE COURT: Okay.

17 THE WITNESS: -- done yet.

18 THE COURT: And -- but that's not the
19 suppressor he's charged with; right?

20 THE WITNESS: No.

21 THE COURT: And you don't know -- is there
22 anything about the suppressor that you charged him with
23 that you can connect to the photograph that was allegedly
24 displayed?

25 THE WITNESS: So the -- just -- I guess

1 through talking with the undercover who observed the
2 photograph, it was my -- my impression that it was the
3 same one.

4 THE COURT: Does that undercover agent have
5 any sort of specialized firearms training or something
6 else that would allow him to be able to match the
7 photograph that he saw with the suppressor that he was
8 later given or later purchased?

9 THE WITNESS: I don't know what level of
10 training -- I mean, if I tried to look at a picture of it
11 and then comparing to the one he was actually given.

12 THE COURT: Okay. But you don't know
13 anything -- I think you said to Mr. Baker's question, you
14 don't know anything about that original photograph he
15 allegedly saw. You don't know if it exists any more or
16 something?

17 THE WITNESS: It could. I just haven't seen
18 it.

19 THE COURT: I understand.

20 THE WITNESS: Just -- yeah.

21 THE COURT: Okay. Apart from that other
22 silencer, were there any other weapons that were
23 discovered that would be illegal for Mr. Faye to possess?

24 THE WITNESS: Yes, I believe there was also
25 a sawed-off shotgun that, based on its length, also would

1 have needed to be registered with the transaction record.

2 THE COURT: Okay. Was there anybody else
3 that lived at that residence?

4 THE WITNESS: Where -- not -- well, it was a
5 large property with multiple structures, the way I
6 understand it, and that there were other individuals who
7 were living on the property. But as far as in the --
8 inside the trailer where he was -- where Mr. Faye was
9 residing at the time, I don't think that there was
10 anybody else living in there.

11 THE COURT: Did he make any statements in
12 the interview that you conducted with regard to the
13 sawed-off shotgun or the other silencer?

14 THE WITNESS: No, because I didn't know that
15 that -- that those existed at the time because there were
16 two things, the arrest and the search, were happening
17 concurrently.

18 THE COURT: Okay. Was ammunition
19 discovered?

20 THE WITNESS: Yes.

21 THE COURT: How -- you know, ballpark, any
22 idea about how much ammunition we're talking about?

23 THE WITNESS: I'm not sure.

24 THE COURT: Okay. And what about tactical
25 gear?

1 THE WITNESS: I believe there were some --
2 there were some tactical gear found in the room where the
3 firearms were.

4 THE COURT: Vests or something like that
5 or --

6 THE WITNESS: (indiscernible).

7 THE COURT: I'm sorry?

8 THE WITNESS: Yes, the tactical vest, the
9 way I understand.

10 THE COURT: Okay. And what about -- what
11 about any sort of plans or maps or anything like that,
12 any of that sort of information discovered?

13 THE WITNESS: Not upon -- not as far as I
14 know inside his residence. I don't think so.

15 THE COURT: Okay. And Mr. Baker asked you
16 some about the Tannerite and the propane or butane tanks,
17 whatever that was. But more importantly, was there
18 anything that was discovered that you would characterize
19 as a booby trap?

20 THE WITNESS: No.

21 THE COURT: Okay. And I think -- I think
22 that was all I wanted to ask about.

23 Mr. Kurtzman, did you want to follow up on
24 any of my questions?

25 MR. KURTZMAN: No, Your Honor.

1 THE COURT: All right, very good.

2 Mr. Baker, anything you want to follow up on
3 related to my questions?

4 MR. BAKER: Just a couple, Your Honor.

5 THE COURT: Okay. Just briefly, please.

6 MR. BAKER: Yes, Your Honor.

7 **RECROSS-EXAMINATION**

8 BY MR. BAKER:

9 Q. Just want to make clear. The other firearms
10 and ammunition that were found at the search warrant,
11 he's not a prohibited person under federal law in any
12 way; correct?

13 A. Not as far as I know, no.

14 Q. And other than the suppressor and a possible
15 sawed-off shotgun, there were no other illegal items that
16 he had; correct?

17 A. Right.

18 Q. I'm looking at a receipt of property from
19 the search warrant. I don't see anything about a vest.
20 Is it possible there were no vests found?

21 A. Yeah, I -- I wasn't there, so I'm not sure
22 what...

23 MR. BAKER: That's all, Your Honor.

24 THE COURT: All right. Mr. Kurtzman?

25 MR. KURTZMAN: I'm good, Your Honor. I just

1 have a couple things to proffer on.

2 THE COURT: That's fine. I just wanted to
3 make sure you didn't want to follow up. Thank you,
4 Agent Potts, appreciate your testimony. You can step
5 down now.

6 *****WITNESS EXCUSED*****

7 MR. KURTZMAN: Your Honor, I'm just
8 proffering that the vests weren't seized from the scene,
9 but pictures were taken of them. Would note under
10 federal law because -- and this is a little argument, but
11 a search of the NFRTR was run. And so any suppressor, if
12 it was in Mr. Faye's possession, would be illegal,
13 doesn't matter if it had a tax stamp or not.

14 THE COURT: He didn't have an FFL, I assume.

15 MR. KURTZMAN: No, Your Honor.

16 Also proffer into the record that a Second
17 American Militia patch was recovered during execution of
18 the search warrant, and the picture described by the
19 undercover of the gun cabinet with the suppressor
20 attached to a rifle was obtained through the returns of a
21 search warrant to one of Mr. Faye's social media
22 accounts.

23 THE COURT: Do you know any more about where
24 the patch was discovered?

25 MR. KURTZMAN: It was in his -- the area

1 that he controlled at the property.

2 THE COURT: I understand, but, like, had he
3 affixed it to some, you know, shirt or was it in the
4 drawer or, you know --

5 MR. KURTZMAN: It was on the tactical vest,
6 Your Honor.

7 THE COURT: Okay.

8 MR. KURTZMAN: And then, Your Honor, just --
9 it's in the record, so I didn't ask Agent Potts
10 specifically about it, but there's another recorded phone
11 call in Exhibit 2, which I actually think would like --
12 it is -- Exhibit 2 is unredacted, and so I'd like that
13 placed under seal, if possible, Your Honor.

14 THE COURT: You want the whole exhibit under
15 seal or just redact that version?

16 MR. KURTZMAN: We'll do the whole exhibit
17 under seal, Your Honor, rather than go through and redact
18 everything.

19 THE COURT: Mr. Baker, do you have any
20 objection to that?

21 MR. BAKER: No objection.

22 THE COURT: All right. I'll file it under
23 seal, then. Make sure you make a note of it.

24 MR. KURTZMAN: Your Honor, just so you're
25 aware, there's a conversation that extends from

1 pages 19 -- excuse me. It was page 12. 19 was the
2 conversation we listened to. But page 12 through 14
3 where Mr. Faye discusses with the undercover their need
4 to investigate things in the state of Tennessee where he
5 believes they're bringing migrants to here; i.e., so
6 rather than travel they could take care of the things
7 here. And he references his belief that some of these
8 facilities processing migrants may be located in
9 Knoxville or Memphis. Just don't want to surprise you
10 when I'm making my argument.

11 THE COURT: All right. Thank you.

12 All right. Mr. Baker, do you have any proof
13 you want to put on?

14 MR. BAKER: Your Honor, I have three
15 witnesses that I intend to call.

16 THE COURT: All right.

17 MR. BAKER: I don't think they'll be very
18 long witnesses, Your Honor, but they're witnesses from
19 the family about detention.

20 THE COURT: All right.

21 MR. BAKER: Your Honor, first I'd call
22 Ms. Tiffany Luebke.

23 THE COURT: All right, ma'am. If you'd step
24 up and be sworn.

TIFFANY LUEBKE

called as a witness, after having been first duly sworn,
testified as follows:

COURTROOM DEPUTY: Could you please state
your name for the record.

THE WITNESS: Tiffany Luebke.

COURTROOM DEPUTY: And could you please
spell your first and last name.

THE WITNESS: T-i-f-f-a-n-y, L-u-e-b-k-e.

COURTROOM DEPUTY: Please have a seat.

DIRECT EXAMINATION

BY MR. BAKER:

Q. Hello, Ms. Luebke. What is your
relationship to Paul Faye?

A. He's my father.

Q. All right. And you might want to speak up
just a little bit.

A. Can you hear me?

Q. I'm kind of hard of hearing, so if you'd
just speak nice and loud for us. So you've known your
father all your life?

A. Correct.

Q. And what do you do for a living, Ms. Luebke?

A. I'm an officer manager for a real estate
agent.

1 Q. And where is your office?

2 A. In Clarksville.

3 Q. How long have you been in that position?

4 A. March 1 will be three years.

5 Q. Okay. Do you live in the Clarksville area?

6 A. I do.

7 Q. And your father, Paul Faye, where does he
8 live?

9 A. In Cunningham, Tennessee.

10 Q. How close is that to Clarksville?

11 A. It's about 45 minutes, 35 to 40.

12 Q. Is it south of Clarksville in Montgomery
13 County?

14 A. (indiscernible).

15 Q. Is it in Montgomery County?

16 A. Yes (indiscernible).

17 Q. Okay. And are you close with your father?

18 A. I am.

19 Q. How often do you see him?

20 A. Quite often.

21 Q. What would that mean?

22 A. I handle all of his medical.

23 Q. I'm sorry?

24 A. I handle all of his medical.

25 Q. But, I mean, how often would you say you see

1 him in a given month or talk to him?

2 A. Almost every other day he calls me, talks to
3 me.

4 Q. Okay. Now, have you ever known your father
5 to be violent?

6 A. No.

7 Q. And does he have any criminal record that
8 you're aware of?

9 A. Not that I'm aware of.

10 Q. Did you grow up with him in your household?

11 A. I did.

12 Q. Was he violent when you were a child?

13 A. No.

14 Q. What kind of father is he to you?

15 A. Amazing. Anything I needed, he's always
16 been my handyman.

17 Q. Okay. You're married?

18 A. I am.

19 Q. Who are you married to?

20 A. Jesse Luebke.

21 Q. Is he here in the courtroom today?

22 A. He is.

23 Q. What does he do for a living?

24 A. He is an active-duty soldier.

25 Q. What's his rank?

1 A. He's an E6.

2 Q. Does that mean sergeant?

3 A. Yes.

4 Q. Okay. Has he recently returned from
5 deployment overseas?

6 A. Yes.

7 Q. What country was he in?

8 A. In Poland.

9 Q. And how long has he been back?

10 A. Well, he's been back since January 31.

11 Q. Did something happen to your father some
12 years ago that caused him some trauma?

13 A. He's done several things.

14 Q. Tell us about that.

15 A. He used to do bull riding before I was born,
16 I know that (indiscernible) he's done a lot.

17 Q. Well, was there some type of situation that
18 involved him welding and some noxious fumes?

19 A. Yes.

20 Q. Tell us about that situation.

21 A. Yes, he was working around a lot of fumes
22 and stuff, and at home -- he come home one day and he
23 had -- he just like shriveled up, he couldn't breathe
24 good and we had to call an ambulance. I was a child
25 then.

1 Q. Was he taken to the hospital?

2 A. Yes.

3 Q. About how long ago was that?

4 A. I was about 14, 15 years old.

5 Q. All right. So how long ago was that?

6 A. Goodness. I'm 35 now, so.

7 Q. About 20 years ago?

8 A. Yeah.

9 Q. Okay. Did -- more recently, say within the
10 last ten years, have you noticed or has the family
11 noticed changes in his behavior and in his thinking?

12 A. Yes.

13 Q. Tell us about that, please.

14 A. I have noticed he would talk to himself. I
15 would notice he would even salute the woods and stuff
16 when I'm talking to him. I'd be, like, who are you
17 talking to, Dad? Oh, you know, that guy out there.
18 There was nobody there.

19 Q. So he's talking to somebody that's not
20 there?

21 A. Uh-huh (affirmative).

22 Q. You said he was saluting trees?

23 A. Yes.

24 Q. Has your father ever been in the military?

25 A. No.

1 Q. Has he ever expressed any delusions to you
2 about the military?

3 A. Not -- he has a mindset, I don't know how to
4 explain it, sorry. More of a -- I can't even put it into
5 words. He has -- he really has. It's just that he
6 expresses more to, like, politics and (indiscernible)
7 stuff like that.

8 Q. Does he talk about politics a lot?

9 A. Yeah.

10 Q. Does he watch the news a lot?

11 A. He does.

12 Q. Have you had conversations with him about
13 the border?

14 A. I haven't, no.

15 Q. Has he ever told you that he wanted to go to
16 the border and shoot anybody?

17 A. Absolutely not.

18 Q. Have you ever heard your father say he
19 wanted to shoot anyone?

20 A. No, he wouldn't hurt a fly.

21 Q. Do you believe that your father would have
22 followed through and gone to the border and shot anyone?

23 A. Absolutely not.

24 Q. How does your father feel about law
25 enforcement?

1 A. He's always been great for them. Like, I've
2 never heard him talk negative. He's always wanted to
3 help. Even when -- during the Clarksville storm, he was
4 out trying to help the -- help them pull out people just
5 to help.

6 Q. What did he do during the storm -- are you
7 talking about the storm we had back in January?

8 A. Yeah.

9 Q. What did he do?

10 A. He went out and helped the police department
11 pull out people left and right.

12 Q. Does your father generally express support
13 of law enforcement?

14 A. I'm sorry, what was that?

15 Q. Does he generally express support --

16 A. Yes.

17 Q. -- for law enforcement?

18 A. Yeah, he's always been grateful for them.

19 Q. Okay. Did something happen in November of
20 this year that caused you to seek attention for your
21 father?

22 A. He actually called me for help. He said he
23 was going crazy. He said he didn't feel right and he
24 needed help. And that's what he -- I came to his help
25 and I took him to the hospital.

1 Q. What hospital did you take him to?

2 A. I took him to NorthCrest.

3 Q. Where is that?

4 A. Exit 24.

5 Q. In the Clarksville area?

6 A. Springfield.

7 Q. Okay. What happened from there?

8 A. They had admitted him to Pine Springs.

9 Q. Okay.

10 A. It's a psychiatric hospital.

11 Q. Where is Pine Springs Psychiatric Hospital
12 located?

13 A. It is on the other side of Nashville. I
14 don't know the exact address. But it's in Nashville.

15 Q. And how long was he committed to this
16 psychiatrist hospital?

17 A. He was there for a week.

18 Q. Did you find out what his diagnosis was?

19 A. They did tell me it was bipolar disorder.

20 Q. Was he prescribed medication?

21 A. He was.

22 Q. What kind of medication is he prescribed?

23 A. Risperdal and he had (indiscernible) for
24 anxiety.

25 Q. Okay. Risperdone (sic), that's a drug for

1 mental health issues?

2 A. Yes.

3 Q. How does your father do when he's taking his
4 Risperdone?

5 A. He's good when he's on it. He's like a
6 normal human.

7 Q. Okay. Let's step back. So he went to Pine
8 Wood; he was there about a week and then they discharged
9 him?

10 A. Yes.

11 Q. Did you see his father after he was
12 discharged?

13 A. Yes.

14 Q. After he was discharged, was he taking his
15 medication?

16 A. He was taking his medication, yes, to my
17 knowledge.

18 Q. All right. How does he do when he doesn't
19 get his medication as needed?

20 A. He starts talking to himself again, seeing
21 things. Just not himself. He'll literally just have a
22 whole conversation with himself.

23 Q. After he was arrested Monday, did you get
24 very concerned about his medication?

25 A. I did.

1 Q. In fact, so concerned that you contacted me?

2 A. I've contacted you several times.

3 Q. Did you contact me many, many times --

4 A. I did.

5 Q. -- worried about your father's medication?

6 A. I did.

7 Q. So he -- he was arrested Monday and he went
8 to the Warren County jail in Bowling Green, Kentucky.
9 You're aware of that?

10 A. Uh-huh (affirmative).

11 Q. And, in fact, you were in contact with him
12 while he was in jail?

13 A. I did.

14 Q. I think you had a video with him maybe on
15 Wednesday?

16 A. Yes.

17 Q. And what was his mental condition like on
18 that video?

19 A. He was not doing good. He was starting to
20 slur. You can tell he was really anxious, and just kind
21 of pacing and repeating himself.

22 Q. Did he tell you whether he had been given
23 his medication?

24 A. He did say that they have not given him his
25 medication yet and he felt really, really bad and just

1 wasn't himself.

2 Q. Did you contact me again on Friday morning
3 of last week?

4 A. I did.

5 Q. Had you had a conversation with your father
6 on Friday morning?

7 A. Yes.

8 Q. What did he tell you?

9 A. He said he still hadn't had his medication
10 yet. They told him it was on order, but he hadn't
11 received it yet.

12 Q. Okay. Did he finally get some medication on
13 Friday?

14 A. Yes, by the end of the evening.

15 Q. Okay. Have they given him his medication
16 properly since Friday?

17 A. No.

18 Q. What is --

19 A. He usually takes his medication around
20 7:00 a.m. I have an alarm set on my phone. I always
21 text him or call him and tell him, hey, you need to take
22 your medications and he takes them right then and there.
23 But he is not receiving them that way in the jail. He's
24 either receiving them too close together or not -- not at
25 all.

1 Q. Okay. And since Friday has there been one
2 day where he didn't get any medication and another day
3 where he only got it once?

4 A. Yes, actually that was yesterday. They
5 didn't give him his morning medications and then later on
6 that night he finally received them.

7 Q. If your father were to be released, will you
8 stay in contact with him?

9 A. Yes.

10 Q. Will you contact him every day?

11 A. Yes. I talk to him every day on the phone.

12 Q. Okay. Can he go back and live on the
13 property where he's been living?

14 A. Yes.

15 Q. Now, since the search warrant's been
16 executed, all the firearms have been taken off of that
17 property; correct?

18 A. Yes. We even removed the two that they
19 left. They're no longer on the property either.

20 Q. They left two guns that belonged to Rita --

21 A. Yes.

22 Q. -- Pepper who's here in the courtroom?

23 A. I don't know exactly who they belong to.
24 They're either my brother's, Joseph Faye, or my mother,
25 Rita Faye. There was two that they left in her care, her

1 property. And then there was two that was left in
2 (indiscernible) in his trailer. But they have all been
3 removed.

4 Q. And where have they been taken?

5 A. They have been put in a safe on Joseph
6 Faye's property.

7 Q. Okay.

8 A. To my knowledge.

9 Q. All right. So, to your knowledge, there's
10 no firearms at the residence in Cunningham, if he were
11 allowed to return there?

12 A. Correct.

13 Q. So how big is the property out there in
14 Cunningham?

15 A. Ten acres, to my (indiscernible).

16 Q. And who does -- your father, Paul Faye,
17 lives there in a trailer?

18 A. Uh-huh (affirmative). At the top of the
19 hill.

20 Q. And there's a house on the property?

21 A. Yes.

22 Q. And Ms. Rita Pepper lives in that house?

23 A. Yes.

24 Q. Ms. Pepper, would you raise your hand.

25 Okay.

1 That's your mother?

2 A. That's my mother.

3 Q. Okay. What kind of person is your mother?

4 A. She's the sweetest person ever. She is
5 willing to help with whatever you need and everyone.

6 Q. Does she have any criminal record?

7 A. No.

8 Q. And she's told you that all firearms have
9 been removed from the property?

10 A. Yes.

11 Q. Okay. Were there any butane tanks on that
12 property?

13 A. To my knowledge, no.

14 Q. Were there propane tanks that are used for
15 heating?

16 A. Yes. I know that they had some because I
17 asked my father for one not too long ago to put on my
18 back porch for my heating unit. But he said it was
19 empty, so he was going to get it filled up for me.

20 Q. If your father gets released, do you have
21 any fear whatsoever that he'll try to get up with some of
22 these people that we've heard described and go down to
23 the Texas border?

24 A. Absolutely not.

25 Q. Okay. Is your father -- let's talk -- what

1 do you know about your father's work history?

2 A. He is a maintenance guy. I mean, he's
3 helped any and everybody, any repairs. He put himself
4 out there -- I actually added him to the neighborhood
5 page to do fence repairs and stuff like that, along with
6 he also has a -- we helped him get a lawn care business
7 called (indiscernible) Lawn Care.

8 Q. Okay. So he does lawn care in the
9 summertime?

10 A. Uh-huh (affirmative).

11 Q. Does he work for someone in the wintertime?

12 A. I know he had a -- I don't know his name.
13 He was working for a repair company. He actually helped
14 build the middle school (indiscernible) in Clarksville.

15 Q. Your brothers are here in court today?

16 A. Yes.

17 Q. What kind of work do they do?

18 A. Joseph -- well, they both work for a
19 concrete (indiscernible). Two different companies, but
20 they both pour concrete.

21 Q. Have they done work here in downtown
22 Nashville?

23 A. Yes, they actually helped build this
24 building.

25 Q. Did your brothers work on this very building

1 pouring the concrete?

2 A. Yes, they did.

3 Q. And that's Joseph and Paul, Jr., those are
4 your brothers?

5 A. Yes.

6 Q. Do they have a criminal record?

7 A. No, absolutely not.

8 Q. Okay. If your brother -- if your father
9 gets released, the Judge is likely to put some very
10 strict rules on his conduct.

11 A. Uh-huh (affirmative).

12 Q. We talked about some of those. Will your
13 father follow those rules if he gets released?

14 A. Yes.

15 Q. Do you have any doubt about that?

16 A. No.

17 Q. Will he appear in court as he's required to
18 do?

19 A. He will.

20 Q. Do you have any doubt about that?

21 A. I don't.

22 Q. Do you think he'll try to run away from
23 these charges?

24 A. Absolutely not.

25 Q. Is your father a loyal American?

1 A. He is.

2 Q. Does he love the United States?

3 A. He does. He even put up my own flag out at
4 my house not too long ago, he made sure to come and put
5 it up.

6 Q. Okay. If the Judge orders him to stay in
7 Tennessee and get mental health treatment, will he follow
8 the Judge's instructions?

9 A. He will. He actually had an appointment
10 today.

11 Q. I want to talk to you about that.

12 A. Okay.

13 Q. After he got released from Pine Wood
14 Psychiatric, was he given an after-care plan?

15 A. He was. He followed up with his primary
16 care (indiscernible).

17 Q. Okay.

18 A. And then from there, they were giving him a
19 referral.

20 Q. Okay.

21 A. He was supposed to go to Athena Healthcare
22 starting on -- today was his initial appointment.

23 Q. Okay. So he had an appointment with Athena
24 Healthcare for today for an assessment?

25 A. Yes.

1 Q. And is the idea they would give him
2 outpatient therapy?

3 A. Yes, they were going to do outpatient
4 therapy and control his medication.

5 Q. If he -- if he were to get released, will
6 you help your father comply with that outpatient care?

7 A. I'll make sure my mother makes sure that he
8 gets there, yes.

9 Q. Okay. Do you want your father to be
10 released?

11 A. I do.

12 Q. Okay.

13 MR. BAKER: I think that's all my questions,
14 Your Honor.

15 THE COURT: Mr. Kurtzman.

16 **CROSS-EXAMINATION**

17 BY MR. KURTZMAN:

18 Q. Hi, ma'am.

19 A. Hi.

20 Q. You heard the recording earlier; right?

21 A. I did.

22 Q. And you agree that that was your father that
23 was captured on it?

24 A. I do.

25 Q. Okay. And that he expresses his desire to,

1 I think, put down as many federal agents as he could if
2 they ever came for him?

3 A. I did hear that, yes.

4 Q. Okay. It's not very pro-law enforcement;
5 would you agree?

6 A. No, I agree, it's not.

7 Q. So you said he got taken in -- or went in
8 for mental health treatment in November and then came
9 back out. Was there any thought about maybe taking his
10 weapons away from him after his mental health diagnosis?

11 A. We did actually take his weapons away for a
12 while, we did. But he started going back hunting and
13 getting back to his mental health. We evaluated him, we
14 made sure that we thought he could control himself with
15 those guns, yes.

16 Q. Okay. But weren't the guns actually taken
17 away at one point because he was using methamphetamine?

18 A. To my knowledge, I don't know what he was
19 using.

20 Q. Okay. But he was using drugs?

21 A. Not to my knowledge.

22 Q. Well, why did the family take away the gun
23 then?

24 A. We took it away for his psych, his mental
25 state.

1 Q. Does your father have any nicknames?

2 A. Not to my knowledge.

3 Q. So you've never heard anybody call him
4 Gunny?

5 A. So I had his phone while he was gone, and I
6 even spoke to everybody and I told them that his mental
7 state was weird and that's why we got him the help that
8 he needed, because I said that it was like he was having
9 a war in his head.

10 Q. And so if I told you that your dad
11 represented himself to the people that we were talking
12 about today, Perry and Odell and Gibson, that he
13 represented to them that he had military service in his
14 background and they could call him Gunny, like short for
15 a gunnery sergeant, you've never heard that?

16 A. Huh-uh (negative).

17 Q. Okay. So you talk to your dad every day.
18 Perry and Odell were arrested back in October of 2022.
19 And you heard the testimony about your dad having further
20 contact with them. Did he ever tell you about his
21 friends who were arrested in Missouri?

22 A. No, I don't know any of that side of him.
23 I've never heard of that.

24 MR. KURTZMAN: No further questions.

25 Thanks.

1 THE COURT: So you heard the calls, the
2 recordings. Was the kind of things he was talking about
3 with regard to the border and things going on and
4 migrants, stuff like that, was that something that he
5 talked about regularly?

6 THE WITNESS: No, Your Honor. I never heard
7 him talk anything like that before.

8 THE COURT: Okay. And you understand that
9 in light of those discussions and conversations and
10 statements that he made that it's -- you understand why
11 somebody would have a concern about him doing something;
12 right?

13 THE WITNESS: Absolutely.

14 THE COURT: So tell me why you don't think I
15 should be concerned about that, that you just don't think
16 that's an issue that he might act on any of that stuff.

17 THE WITNESS: Well, I think that with him
18 getting the medical help that he needs, and that's the
19 plan is to continue -- I had him scheduled for today --
20 was to get him the mental health that he needed. And
21 this just further proves that he needs that mental
22 health.

23 THE COURT: He went to the inpatient
24 treatment in November; right?

25 THE WITNESS: Yes.

1 THE COURT: And these conversations happened
2 in January. And so what -- how do you -- do you
3 attribute the things he was saying to mental health
4 issues? What about the fact that he'd gotten treatment
5 so far and still was having those kind of statements?

6 THE WITNESS: I don't think he was getting
7 the actual full medications that he needed. I felt like
8 he needed more. That's why we furthered on with the
9 getting -- because, I mean, he was still talking to
10 himself here and there. We noticed it, and so we thought
11 that he does need that, he needed further evaluation.
12 And I even reached out to them to get that.

13 THE COURT: You described it in your
14 testimony as I think you said a war in his head?

15 THE WITNESS: Yeah.

16 THE COURT: Tell me what you mean. Can you
17 explain that a little bit more?

18 THE WITNESS: So I read one of the
19 conversations when -- I had his phone while he was
20 admitted, and I read one of them and I just -- it wasn't
21 something -- it was like he was in the old days of
22 something he would read out of a history book or -- like,
23 I've heard those names that he was talking about a while
24 ago, like he said, just of a -- it was we're going to the
25 bunkers or something like that. I'm pretty sure that's

1 exactly what I read. So it was just a weird -- not an
2 everyday conversation.

3 THE COURT: Did you ask him about those
4 things?

5 THE WITNESS: I did not. I just -- he was
6 getting the psychiatric help, so I feel like that's their
7 expertise and not mine, so I just felt like I would
8 continue that.

9 THE COURT: Did you -- did you talk to your
10 other family members about those things?

11 THE WITNESS: I did.

12 THE COURT: And what was their response or
13 reaction to it?

14 THE WITNESS: The exact same way I felt,
15 that we needed to continue to get him the mental health
16 that he needed.

17 THE COURT: Okay. Any redirect, Mr. Baker?

18 MR. BAKER: No, Your Honor.

19 THE COURT: Thank you, ma'am. I appreciate
20 you being here. Thank you for your testimony.

21 Watch your step when you go down there.

22 *******WITNESS EXCUSED*******

23 MR. BAKER: Your Honor, next I would like to
24 call Sergeant Jesse Luebke.

25 THE COURT: All right. Mr. -- Mr. Baker,

1 I've got a matter that I need to take up at 3 o'clock.
2 What I -- oh, okay. Never mind.

3 MR. BAKER: This will be pretty quick.

4 THE COURT: That's all right. Thank you.

5 MR. BAKER: Thank you, Your Honor.

6 **JESSE LUEBKE**

7 called as a witness, after having been first duly sworn,
8 testified as follows:

9 COURTROOM DEPUTY: Could you please state
10 your name for the record.

11 THE WITNESS: Jesse Luebke.

12 COURTROOM DEPUTY: Could you please spell
13 your last name.

14 THE WITNESS: L-u-e-b-k-e.

15 COURTROOM DEPUTY: Thank you so much.
16 Please have a seat.

17 **DIRECT EXAMINATION**

18 BY MR. BAKER:

19 Q. Sergeant Luebke, thank you for being here
20 today. What branch of the service are you in, sir?

21 A. I'm in the United States Army.

22 Q. How long have you been in the United States
23 Army?

24 A. 12 years.

25 Q. What is your rank?

1 A. I'm a staff sergeant.

2 Q. And what is your job?

3 A. I am a wheeled vehicle mechanic.

4 Q. A what?

5 A. A mechanic.

6 Q. Okay. Were you recently stationed in
7 Poland?

8 A. Correct.

9 Q. And what other overseas deployments have you
10 been?

11 A. I have been to Bulgaria, Romania, Germany,
12 Lithuania. Pretty much everything in Europe.

13 Q. Okay. And do you now live in the
14 Clarksville area?

15 A. I do.

16 Q. How long have you been back from Poland?

17 A. I have been back from Poland since the 31st
18 of January.

19 Q. And how long are you going to be here with
20 us?

21 A. I will be here for quite a while. I have an
22 indefinite contract coming up. I've been in Clarksville
23 since 2018.

24 Q. So for the foreseeable future you expect to
25 be stationed at Fort Campbell?

1 A. Correct.

2 Q. And live here in Tennessee --

3 A. Correct.

4 Q. -- with your wife and family?

5 How many children do you and your wife have?

6 A. Four.

7 Q. All right. How long have you known your
8 father-in-law, Mr. Paul Faye?

9 A. Four years.

10 Q. And how well have you gotten to know him
11 during that time?

12 A. Quite well. Very well.

13 Q. What -- what can you tell the Court about
14 what type of person you know your father-in-law to be?

15 A. Very kind, very generous. As stated
16 earlier, would give the shirt off his back, help in
17 disaster relief, change a tire, a handyman. Very, very
18 kind, sweet person. Just very gullible.

19 Q. When you say he's gullible, what do you mean
20 by that?

21 A. He is one to where if information is
22 provided, he will try to almost one-up you. Like, I
23 deployed and I've seen different types of things in my
24 service. And he -- it would almost be as if anything
25 that you present, he would have to one up, whether it was

1 maintenance, hunting, fishing.

2 Q. Does he exaggerate things?

3 A. Yes.

4 Q. Okay. Have you noticed in the last four
5 years that you suspected mental health issues?

6 A. Yes.

7 Q. Tell us about that, please.

8 A. On two different occasions my wife and I
9 have taken him in for what he stated was bugs under his
10 skin. And then again I was also with my wife when he was
11 admitted into the (indiscernible).

12 Q. When was that?

13 A. 2022 timeframe.

14 Q. Let's talk about that for a minute. What
15 happened in '22?

16 A. So the first one he went to Tennova
17 Healthcare, and it's on recording that he had identified
18 as he had almost like a bug under his skin, like a
19 scratching, itching. And that video has been provided.

20 Q. Okay. Did he have a bug under his skin?

21 A. He did not.

22 Q. What is your understanding about what he's
23 being diagnosed with?

24 A. It almost would be delusion and maybe --
25 yeah, delusion.

1 Q. Okay. If the Court sees fit to release
2 Mr. Faye, will you be available and around to help your
3 wife and to help him --

4 A. Yes.

5 Q. -- to comply with the rules?

6 A. Yes.

7 Q. Do you believe he would pose a risk of
8 flight, meaning would he take off and not come to court?

9 A. No, he has no passports and nothing like
10 that. And then his whereabouts are typically tracked
11 too, so.

12 Q. Does the family have something called 360?

13 A. Correct. That's what I was just mentioning
14 with his whereabouts or tracking.

15 Q. Tell us about that.

16 A. 360 is an app on your phone and it pinpoints
17 exactly where you are. That's how we actually found his
18 rental car at the Davidson County courthouse.

19 Q. That's how you found out where his car was
20 last night?

21 A. Yes.

22 Q. So the family tracks each other --

23 A. Correct.

24 Q. -- through your devices --

25 A. Yes.

1 Q. -- on your GPS on your telephone --

2 A. Yes.

3 Q. -- on an app called 360?

4 A. Yes.

5 Q. Do you think he's capable of complying with
6 conditions of release?

7 A. Yes.

8 Q. Judge will order that he follow all types of
9 conditions, most notably don't break the law and don't
10 use drugs and don't possess firearms. Can he do all of
11 those things?

12 A. Yes.

13 Q. Can you go from time to time to the property
14 in Cunningham and check on him?

15 A. Yes.

16 Q. And are you willing to do that?

17 A. Yes.

18 Q. Is there anything else you would like the
19 Court to know about whether he should be released?

20 A. Like I said, superkind, supersweet. I know
21 the comments that were stated. Again, that's almost as
22 if the information that is provided and will continue.
23 During the recording it was mainly him just going on and
24 on, one thing would be about food, then it would be about
25 the snowstorm, it would be about the vehicle that was

1 maybe there, maybe wasn't there, so.

2 Q. Do you -- I mean, you're a soldier for the
3 United States?

4 A. Correct.

5 Q. I assume you're very loyal to this
6 country --

7 A. Yes.

8 Q. -- and to our constitution?

9 A. Very much.

10 Q. And the law?

11 A. Yes.

12 Q. Do you fear that your uncle (sic), if he
13 were let out, will try to harm migrants either in
14 Tennessee or at the border or anywhere else?

15 A. No. And we've received training for when
16 we've deployed overseas for insider threats and things of
17 that nature too. And Paul doesn't strike me as one to be
18 an insider threat.

19 Q. Why didn't that -- why doesn't that
20 recording you just heard make you think that he is a
21 threat?

22 A. I think he even states on there that he seen
23 a vehicle or if he was concerned about his vehicle being
24 bugged, I think that just further proves that he's not
25 necessarily in his right state of mind.

1 MR. BAKER: Thank you, sir.

2 **CROSS-EXAMINATION**

3 BY MR. KURTZMAN:

4 Q. You'd agree, though, that him saying he
5 wants to go to the border and kill people -- you said
6 he's not in the right state of mind. And then having,
7 what, half a dozen weapons, that's probably not good;
8 right?

9 A. It's not illegal to own weapons.

10 Q. What's that?

11 A. It's not illegal to own weapons.

12 Q. That's not my question.

13 A. Okay.

14 Q. You said he's not in the right state of
15 mind?

16 A. Correct.

17 Q. And he possessed a lot of weapons?

18 A. Correct.

19 Q. And no one did anything about that?

20 A. There have been several attempts. He's been
21 admitted numerous times and then, as stated earlier,
22 earlier testimony that the weapons were taken from him
23 and that he actually reached out once on his own to seek
24 help as well.

25 Q. You mentioned -- I spent a couple decades in

1 the Army myself. So you mentioned this insider threat
2 reporting?

3 A. Correct.

4 Q. All right. Which takes place, like, once a
5 year and lasts about 30 minutes?

6 A. We do annual training on it, correct.

7 Q. Sure. Would you be told to report a soldier
8 who had expressed that they wanted to kill federal
9 agents?

10 A. Yes.

11 Q. Would you report a soldier who had firearms
12 and made those same threats?

13 A. Yes.

14 Q. But you said your training told you he's not
15 a threat even though he's doing all those things?

16 A. He has actually reached out to seek that
17 help. That was the difference. The Army would also seek
18 help and enroll you in behavioral health issues as well.

19 Q. Right. You said you've talked to your
20 father-in-law a fair amount. Did he ever tell you about
21 his friends in Missouri who got arrested after shooting
22 at federal agents?

23 A. He did not.

24 Q. Don't you find it interesting that the same
25 undercover who was working on that case, your dad somehow

1 came up with the same plot again that he'd had with
2 Mr. Perry and Odell with this new undercover?

3 A. So I don't know if that's necessarily the
4 same as one of them actually attended the border and
5 actually stated by the individual here that an individual
6 who actually went to the border wasn't arrested --

7 Q. You're confusing people.

8 A. Okay.

9 Q. Mr. Perry and Mr. Odell were arrested in
10 Missouri --

11 A. Okay.

12 Q. -- after they opened fired on the FBI.

13 A. Yes.

14 Q. Your dad was planning -- or your
15 father-in-law was planning to go to the border with them
16 before they were confronted by the FBI. Okay?

17 A. Okay.

18 Q. That occurred in October of 2022. Beginning
19 in March of 2023, just a few short months later, he's
20 again planning with the undercover agent, talking about
21 going to the border and what they have to do. You don't
22 think that's a threat that after his friends are arrested
23 he then goes back to the same plan four months later?

24 A. I believe that he is not in the right state
25 of mind. But, yes, the actions are wrong, correct.

1 Q. You'd agree that mass shooters are not in
2 the right state of mind; right?

3 A. Absolutely.

4 MR. KURTZMAN: Thanks. No further
5 questions.

6 THE COURT: Were those statements, like what
7 you heard in the recording, were those things you'd ever
8 heard him talk about before?

9 THE WITNESS: No.

10 THE COURT: Did he talk about politics?

11 THE WITNESS: So he would talk about
12 politics, but never in, like, a violent outburst or
13 anything of that nature.

14 THE COURT: Did he talk about issues at the
15 border?

16 THE WITNESS: Not to me, Your Honor.

17 THE COURT: He never expressed to you his
18 concern about the things happening at the border?

19 THE WITNESS: Just other than what was
20 typically in the news, but not as an actual personal
21 vendetta or anything like that, Your Honor.

22 THE COURT: What did he say? What kind of
23 stuff was he saying?

24 THE WITNESS: That the border crisis is an
25 issue and that we have governors and elected officials on

1 one side versus the bigger government on the other side.

2 THE COURT: Versus what's on the other side?

3 THE WITNESS: Versus a bigger government on
4 the other side, essentially two governments butting
5 heads.

6 THE COURT: Did he express what he thought
7 about that?

8 THE WITNESS: Not to me, Your Honor.

9 THE COURT: Okay. And you were gone -- were
10 you gone in November?

11 THE WITNESS: Yes, I was deployed, correct.

12 THE COURT: When did you start your most
13 recent deployment?

14 THE WITNESS: In May.

15 THE COURT: All right. And were you
16 communicating with your wife about your father-in-law
17 during the time that you were away?

18 THE WITNESS: Correct. I know that she
19 sought for him to get mental health.

20 THE COURT: Okay. And was that because she
21 felt like something was different than the way it had
22 been with him in the past?

23 THE WITNESS: From my understanding, the
24 family was concerned and were seeking him to get the help
25 that he needed.

1 THE COURT: Okay. All right.

2 Any redirect?

3 MR. BAKER: No, Your Honor.

4 THE WITNESS: All right. Thank you,
5 Sergeant Luebke. Appreciate your testimony.

6 *****WITNESS EXCUSED*****

7 MR. BAKER: Your Honor, our final witness is
8 Ms. Rita Pepper.

9 THE COURT: All right. Ms. Pepper, if you'd
10 step up, please, and be sworn.

11 RITA PEPPER

12 called as a witness, after having been first duly sworn,
13 testified as follows:

14 COURTROOM DEPUTY: Could you please state
15 your name for the record and spell your first and last
16 name.

17 THE WITNESS: Rita Pepper. R-i-t-a,
18 P-e-p-p-e-r.

19 COURTROOM DEPUTY: Thank you so much.
20 Please have a seat.

21 DIRECT EXAMINATION

22 BY MR. BAKER:

23 Q. Hello, Ms. Pepper.

24 A. Hi.

25 Q. Ms. Pepper, what's your relationship to Paul

1 Faye?

2 A. I'm his ex-wife.

3 Q. Okay. Could you speak up just a little bit?

4 I'm hard of hearing.

5 A. His ex-wife.

6 Q. How long were y'all married, Ms. Pepper?

7 A. 18 years.

8 Q. About when did you get divorced?

9 A. 2007.

10 Q. All right. What is your relationship now?

11 Are you friends?

12 A. Yeah, we're better friends now than we was
13 when we was married.

14 Q. Okay. And do you live on property together
15 in Cunningham, Tennessee?

16 A. Yes.

17 Q. Okay. You live in which structure on that
18 property?

19 A. I live in the house.

20 Q. And where does Paul stay?

21 A. In the trailer.

22 Q. How far apart are those buildings?

23 A. Shoot, I don't know. What, 200 feet?

24 Q. Okay. So they're close by each other?

25 A. Yeah.

1 Q. Do you see each other every day?

2 A. Oh, yeah.

3 Q. Okay. Are there any butane tanks scattered
4 about the property?

5 A. No.

6 Q. Were there -- are there some propane tanks?

7 A. There's propane.

8 Q. About how many would you guess are out
9 there?

10 A. I don't know, probably about eight because I
11 have four of my own.

12 Q. Okay. What are they used for?

13 A. Grilling out and heating.

14 Q. Okay. What -- how do you heat?

15 A. We have propane heaters.

16 Q. In the house?

17 A. Yes.

18 Q. So you bring them in and attach them to the
19 heater?

20 A. Yes.

21 Q. Who else lives on the property there with
22 you?

23 A. Me and my brother, Billy.

24 Q. Okay. So let me ask you, are you employed?

25 A. No. Disabled.

1 Q. You're disabled?

2 A. Yes.

3 Q. You receive SSI disability?

4 A. Yes, sir.

5 Q. What is your disability?

6 A. I've got degenerative disk disease in my
7 back.

8 Q. Okay. So you're there all the time?

9 A. Yes.

10 Q. Okay. And is your brother on the property
11 all the time?

12 A. Yes.

13 Q. Is he also disabled?

14 A. He's disabled.

15 Q. What's his disability?

16 A. He's got a brain disease.

17 Q. Is he also in a wheelchair?

18 A. Yes.

19 Q. He has difficulty walking?

20 A. He does.

21 Q. Okay. How does he get along with your
22 ex-husband, Paul Faye?

23 A. They get along great.

24 Q. Is there anybody else that lives on the
25 property at this time?

1 A. Just a nephew, Bradley.

2 Q. Your nephew Bradley?

3 A. He lives in the house with me.

4 Q. He stays in the house with you. And could
5 you raise your hand, sir? How old is Bradley?

6 A. 19, 20.

7 Q. Okay. And does he get along well with
8 his -- with Mr. Paul Faye?

9 A. Yes.

10 Q. All right. Now, the government executed a
11 search warrant on your property on Monday; correct?

12 A. Correct.

13 Q. And they took a whole lot of items?

14 A. Yes.

15 Q. The firearms and ammunition they took, who
16 did that stuff belong to?

17 A. Paul and my sons.

18 Q. Okay. Your sons and Paul. Are any of the
19 guns registered to your sons?

20 A. Yes, I think so, yes.

21 Q. You think so? But you're not sure?

22 A. Registered to my son Joseph, yes.

23 Q. Okay. Have you ever known him to try to
24 harm anyone or shoot anyone with those guns?

25 A. No.

1 Q. Have you ever known him to be a violent
2 person?

3 A. Never.

4 Q. Has he ever been violent with you?

5 A. No.

6 Q. Have you ever seen him be violent with
7 anyone else?

8 A. No.

9 Q. Now, you heard the Judge ask -- your
10 ex-husband Paul, he talks about politics, doesn't he?

11 A. Yes.

12 Q. And does he talk about the border?

13 A. I haven't heard him say nothing.

14 Q. But he talks about --

15 A. (speaking at the same time).

16 Q. -- he's not a big fan of President Biden;
17 would that be fair to say?

18 A. Yes.

19 Q. And he supports Mr. Trump; would that be
20 fair to say?

21 A. Yes.

22 Q. Does he spend a lot of time watching Fox
23 News?

24 A. I don't know.

25 Q. You don't know, okay.

1 A. I know he watches TikTok. I don't know
2 about --

3 Q. Oh, he watches TikTok?

4 A. Yes.

5 Q. All right. Ms. Pepper, are you -- are you
6 concerned that if your ex-husband were released that he
7 would try to follow through with this plot that those
8 folks have been describing?

9 A. No.

10 Q. Is he going to try to hurt anyone?

11 A. No.

12 Q. Especially now that he's under the watchful
13 eye of this court?

14 A. Right. No.

15 Q. If he's released, will he follow the
16 conditions the judge puts on him?

17 A. He will.

18 Q. Why do you say that?

19 A. Because he -- he don't want to hurt nobody.

20 Q. Okay. Well, do you think he wants to --
21 and --

22 A. Huh?

23 Q. Go ahead.

24 A. He just -- I know he don't want to hurt
25 nobody.

1 Q. How do you know that?

2 A. Because he's never been one to hurt someone.

3 Q. Okay. He's never -- he's got no criminal
4 record; correct?

5 A. Right. No.

6 Q. Would you be willing to serve as a
7 third-party custodian?

8 A. I will.

9 Q. And do you think you understand what that
10 means?

11 A. Yes.

12 Q. And what does that mean?

13 A. To make sure he gets to his appointments and
14 stuff to see the probation officer and all that.

15 Q. Okay. If he were to break the Judge's
16 rules, what would you do?

17 A. I would turn him in.

18 Q. Okay. Would you report him to his probation
19 officer? Would you show any hesitation on doing that?

20 A. No.

21 Q. Are you hopeful that the Judge will release
22 him into your custody?

23 A. I am.

24 Q. And will you make sure he comes to court and
25 follows the rules?

1 A. I will.

2 MR. BAKER: All right. Thank you, ma'am.

3 THE WITNESS: Thank you.

4 **CROSS-EXAMINATION**

5 BY MR. KURTZMAN:

6 Q. Ma'am, you said that you and Mr. Faye are
7 close friends?

8 A. Yes.

9 Q. So you talk to him every day?

10 A. Every day.

11 Q. Okay. Did he ever tell you about his
12 friends in Missouri who got arrested?

13 A. About Bryan.

14 Q. What did he tell you?

15 A. Just that he had got arrested. He didn't
16 say why or nothing.

17 Q. Okay. Didn't tell you why?

18 A. No.

19 Q. Just said that they got arrested?

20 A. Yes.

21 Q. So you didn't know that they had shot at FBI
22 agents as they were trying to do a search warrant like
23 they did at your house?

24 A. I didn't.

25 Q. When the FBI came to your house, they just

1 knocked on the door; right?

2 A. Huh?

3 Q. When the FBI came to execute the search
4 warrant, they just knocked on the door; right?

5 A. No, they didn't just knock on my door.

6 Q. What did they do?

7 A. They hollered over the intercom for me to
8 come -- for everyone in the house to come out with their
9 hands up.

10 Q. Okay. Did you do that?

11 A. Yes.

12 Q. You said you talk to Mr. Faye every day.
13 You knew about his friends in Missouri getting arrested,
14 but you didn't know what for?

15 A. No.

16 Q. And now that I told you that they were
17 plotting to go to the border to shoot migrants and border
18 patrol agents, that doesn't concern you at all that he
19 hid that from you?

20 A. Not really. He's never -- I know he's not a
21 violent person, so.

22 Q. Okay. But you said his friend Bryan -- his
23 friend Bryan was charged with assaulting a federal
24 officer and that he tried to kill them by shooting at
25 them. And he just told you his friend was arrested?

1 A. Uh-huh (affirmative).

2 Q. The fact that he hid that he was plotting
3 with them to also go to the border back in late 2022,
4 that doesn't give you concerns?

5 A. No, because he's not -- I know he's got
6 mental problems.

7 Q. Okay. You agree that people with mental
8 problems, like any one of us, though, could commit a
9 crime; right?

10 A. Well, yeah.

11 Q. Okay. So Mr. Faye joined in the same type
12 of planning again this past year with the undercover to
13 again go to the border to commit acts of violence.
14 Doesn't that concern you that after his friends are
15 arrested he goes back and sort of reengages in the same
16 conduct?

17 A. Again, I just -- it's the mental -- I feel
18 it's just because of him being mental.

19 Q. Right. But don't you think somebody that
20 struggles with mental health like Mr. Faye, they could
21 commit an act of violence; right?

22 A. Sure.

23 Q. Did he talk to you about his plans to go to
24 Texas?

25 A. No.

1 Q. Did he talk to you about his communications
2 with Greg Gibson?

3 A. No.

4 Q. And Greg Gibson's militia leader in
5 North Carolina and Mr. Faye never told you about that?

6 A. No.

7 Q. Doesn't all that make you concerned that he
8 was actually planning to go to the border?

9 A. No, because I've heard him say to people
10 that's tried to get him to go to the border with them and
11 him tell them no.

12 Q. Who's that?

13 A. I don't know who. I just -- I've heard --

14 Q. You said you've heard conversations?

15 A. On the phone, yeah, but I didn't know who it
16 was.

17 Q. Who was he talking to?

18 A. I don't know, I didn't ask him who he was
19 talking to.

20 Q. But he never mentioned Mr. Gibson to you?

21 A. No.

22 Q. Did he ever mention the undercover agent
23 from Knoxville?

24 A. No.

25 Q. Did you ever hear him go by Gunny in these

1 conversations?

2 A. No.

3 MR. KURTZMAN: No further questions.

4 Thanks.

5 THE COURT: Ms. Pepper, so I imagine it
6 could be a little challenging to strike a balance between
7 living on the same property with your ex-husband and not
8 getting in his business at the same time; right?

9 THE WITNESS: Yeah.

10 THE COURT: And is that kind of what you
11 tried to do was try to --

12 THE WITNESS: Try to stay out of it.

13 THE COURT: -- coexist but not really get
14 involved in his business?

15 THE WITNESS: Right.

16 THE COURT: How long have you had concerns
17 about his mental health?

18 THE WITNESS: For a few years now.

19 THE COURT: And were you involved in the
20 discussions and actions taken that your daughter
21 described about -- and your son-in-law about him going to
22 the hospital because of these bugs under his skin and
23 going to the Pine Woods or whatever it was?

24 THE WITNESS: Yes.

25 THE COURT: Were you involved in that?

1 THE WITNESS: Yes, sir. I actually went to
2 the hospital with them in Springfield.

3 THE COURT: Okay. And what about the most
4 recent committal that happened? Were you involved in
5 that?

6 THE WITNESS: That was from Springfield.

7 THE COURT: That was from Springfield, okay.
8 All right. And so he kept a lot of things from you, and
9 you didn't really get engaged trying to find out a lot of
10 things going on in his life; right?

11 THE WITNESS: Right.

12 THE COURT: And sort of chief among that was
13 all this stuff we've heard about, we heard this telephone
14 recording. Do you know anything about that?

15 THE WITNESS: No. He knows I'm not into the
16 political sense, so any -- if he did even say anything
17 about it, I would -- I don't want to hear it. I don't
18 want to hear about it. I'm not political.

19 THE COURT: Uh-huh (affirmative). So, I
20 mean, if -- if he were released and you were his
21 third-party custodian, how would -- how would you be able
22 to assess whether or not there was something to be
23 worried about or concerned about?

24 THE WITNESS: Well, he still talks to me
25 about everything, you know.

1 THE COURT: Just not that stuff.

2 THE WITNESS: Not that stuff, yeah.

3 THE COURT: So that's the stuff we're
4 worried about and he ain't gonna talk to you about it.
5 How is that really protecting that he won't get all
6 worked up and his mental health issues cause him to act
7 on it?

8 THE WITNESS: Uhm.

9 THE COURT: Yeah.

10 All right. Mr. Baker, you want to follow
11 up?

12 **REDIRECT EXAMINATION**

13 BY MR. BAKER:

14 Q. Well, you certainly -- if he is released,
15 can you promise the Court that you will see him every
16 day?

17 A. Yes.

18 Q. And that you will -- you will be aware of
19 all of the conditions that he has to follow?

20 A. I will.

21 Q. And if he breaks any one of those
22 conditions, will you report him to his probation officer?

23 A. I will.

24 Q. If you hear him discussing politics about
25 the border or about guns or about immigrants, will you

1 report him to the probation officer and call me and tell
2 me as well?

3 A. I will.

4 MR. BAKER: That's all, Your Honor.

5 THE COURT: Mr. Kurtzman, anything you want
6 to follow up on my questions?

7 MR. KURTZMAN: No, Your Honor.

8 THE COURT: All right. Thank you,
9 Ms. Pepper. I really appreciate you being here. Thank
10 you for your testimony.

11 *******WITNESS EXCUSED*******

12 MR. BAKER: Your Honor, could I have just a
13 moment, please?

14 THE COURT: You may.

15 MR. BAKER: Your Honor, no further
16 witnesses, but I would like to make a proffer.

17 THE COURT: All right. You may.

18 Mr. Baker, you're welcome to stand like that
19 if you want to.

20 MR. BAKER: I'll turn around.

21 THE COURT: If you want to swing that
22 around, you can do that too.

23 MR. BAKER: Thank you, Your Honor.

24 THE COURT: Thank you.

25 MR. BAKER: I was trying to gather my

1 thoughts here a little bit.

2 THE COURT: I understand.

3 MR. BAKER: Your Honor, in terms of the
4 proffer, I'd like to make a proffer on behalf of Mr. Paul
5 Faye. And that proffer is as follows: That he
6 recognizes he has mental health problems and that he
7 needs treatment. He wants treatment. He will comply
8 with treatment. He wants to assure this Court that if he
9 is released, regardless of whatever crazy statements that
10 he has made in the past, that he is not serious and he is
11 not going to go to the Mexican border and try to harm
12 agents or immigrants, nor will he try to harm any
13 immigrants or agents here in Tennessee.

14 He wants the Court to know that if the Court
15 gives him the opportunity to be released, he'll comply
16 with all the conditions of his release and that he will
17 continue going to outpatient treatment and take his
18 medication. And that he is not a danger. He wants the
19 Court to know that he is not a danger and he'll comply.

20 That's all, Your Honor.

21 THE COURT: All right. Thank you.

22 MR. KURTZMAN: Your Honor, can Mr. Baker and
23 I approach?

24 THE COURT: I'm sorry?

25 MR. KURTZMAN: Can Mr. Baker and I approach?

1 THE COURT: Yeah, sure.

2 (Bench conference held off the record.)

3 THE COURT: All right. We're going to
4 take -- we're going to take a short recess. I have
5 another matter that I need to tend to at 3:30. You-all
6 are welcome to stay in the courtroom, but if you need to
7 have any conversations, I'd ask you to please take that
8 outside. We'll take up -- I'll take up my other matter
9 and then we'll -- we'll reconvene and I'll hear from the
10 parties in terms of argument and we'll go from there.
11 Thank you.

12 (Whereupon, a break was taken.)

13 THE COURT: Thank you, you can be seated.

14 All right. We're back on the record after a
15 short break. I appreciate everybody's patience. Any
16 other proof before we get argument, Mr. Kurtzman?

17 MR. KURTZMAN: No, Your Honor.

18 THE COURT: Mr. Baker, anything else?

19 MR. BAKER: No, Your Honor.

20 THE COURT: All right. Very good, thank
21 you.

22 Mr. Kurtzman, I'll hear from the government.

23 MR. KURTZMAN: Your Honor, all the
24 Section 3142 factors here weigh in favor of detention.
25 When you look at the nature and circumstances of the

1 offense at issue here, as the FBI conducted an 18-month
2 investigation into individuals planning to commit acts of
3 violence on the border, they encountered Mr. Faye in two
4 of those investigations.

5 The offense here, which is the suppressor,
6 isn't related to that conduct. And the only reason it's
7 not is because law enforcement deemed Mr. Faye to be such
8 a danger to the community based on his own statements,
9 some of which were played today, that it had to arrest
10 him in the most efficient and timely manner in order to
11 get him off the street.

12 That's why there's not a larger conspiracy
13 to assault federal officers charged here is, quite
14 frankly, law enforcement couldn't wait for the evidence
15 to develop anymore. They had a threat that they were at
16 significant risk if Mr. Faye ever encountered them.

17 We knew he was going to encounter them
18 because we had been investigating him and he'd been
19 engaged in criminal conduct. That's why when you look at
20 the nature of the events, I think we can also look --
21 that's also informed by looking at the steps the FBI took
22 to bring Mr. Faye into custody.

23 They knew he was going to be at the
24 courthouse. They coordinated with that -- with the
25 courthouse in order to ensure that he was going to be

1 there. They then observed him traveling down there and
2 then took him into custody only after he was -- he had
3 gone through the metal detector. Only then did law
4 enforcement then go to his home because he had told them
5 it was booby trapped and that he planned to commit acts
6 of violence if he was ever confronted there. And he was
7 equipped to do so with numerous firearms that we've
8 discussed, the short-barreled shotgun, the suppressors,
9 and significant amounts of ammunition for each of those
10 firearms.

11 When we look at the history and
12 characteristics of the defendant, that also weighs
13 heavily in favor of detention. When I look at his
14 history and characteristics, let's look just in the past
15 couple years what he's done. He was conspiring with
16 Mr. Perry and Mr. Odell to go down to the border.

17 Mr. Perry and Mr. Odell actually shot at
18 federal law enforcement, as the defendant said he would,
19 when they were confronted and then now pending trial in
20 April of this year in the Western District of Missouri.

21 Mr. Faye knew that they went to jail, and a
22 simple Google search would tell you why they went to
23 jail. He's still communicating with them, and then
24 months later, after we identified that Mr. Faye was the
25 co-conspirator of those two individuals, an undercover

1 attempted to contact Mr. Faye and was successful. And
2 then they began talking about training and talking about
3 going to the border, just like Mr. Faye had done with
4 Mr. Perry and Odell.

5 I know Mr. Baker will paint him as -- I
6 believe he called him delusional at one point, and
7 there's been a lot of discussion of Mr. Faye's mental
8 health. He was involved in one conspiracy with Mr. Perry
9 and Odell and just a few months later, after his friends
10 had been arrested, he was right back doing the same
11 thing, preparing to do the same thing again.

12 Your Honor, we talk about the danger to the
13 community. No one close to Mr. Faye knew that he'd
14 entered these two plots. They knew he had mental health
15 concerns for him. And based on his own statements, I
16 think those concerns are valid. No one says that they
17 come into the world with the blood of someone else on
18 them and they're going to go out the same way. That's
19 not something that a mentally healthy person says.

20 But that is the type of rhetoric and conduct
21 and conspiratorial plotting that Mr. Faye has done since
22 October 2022. If released again, there's nothing to say
23 that he's not going to try to get into a third conspiracy
24 to go to the border and commit these acts.

25 The danger to the community. Law

1 enforcement has an incredibly hard job in the border
2 area. There are reports of being understaffed, conflicts
3 between federal, state and local authorities, and
4 individuals like Mr. Faye and others -- and Mr. Gibson,
5 who Mr. Faye was also conspiring with to go down there
6 and commit acts of violence, either targeting migrants or
7 law enforcement officers just attempting to do their job
8 in protecting our southern border.

9 The danger to the community there is strong.
10 I don't think -- while Mr. Faye's daughter, son-in-law
11 and ex-wife are all law-abiding people, I don't think any
12 of them have the sufficient resources and ability to
13 monitor him in a way that would give the Court confidence
14 that any conditions of release would be appropriate and
15 would ask that he be detained pending trial.

16 THE COURT: Hang on, Mr. Kurtzman. I want
17 to ask you a question. So -- I don't know how it
18 relates, and maybe you'll tell me it doesn't, but I'm
19 struggling a little bit with Mr. Gibson, who I heard all
20 this testimony about and his alleged conspiracy and
21 all -- plotting and recruiting efforts that he made, and
22 then he actually goes to the border and doesn't get
23 arrested, charged with anything at all.

24 And then you have somebody who never does
25 that, never takes that kind of substantial step, and --

1 he's got a different charge, but it's the same underlying
2 conduct that you're arguing dangerousness for. And then
3 I'm trying to -- trying to grapple with the disparity
4 between that conduct and what to do here.

5 MR. KURTZMAN: So... Trying to think of a
6 way to answer you. I'm going to have to -- I think the
7 question you've asked, I'm going to have to tell you
8 things that I did not introduce into evidence here.

9 THE COURT: Uh-huh (affirmative).

10 MR. KURTZMAN: But I think to inform you so
11 you understand, I think it's probably fair to do so.
12 Mr. Gibson coordinated a multistate call amongst militia
13 leaders talking about their travel to the border.
14 Mr. Faye was invited to that as the leader of the
15 Tennessee arm of this multistate militia. Or multistate
16 group of militias, we'll say.

17 Mr. Gibson then pitched to everyone that he
18 was going to do a reconnaissance visit, which is the
19 visit he went on. Law enforcement monitored him the
20 entire way from North Carolina, all the way there and
21 back. He was interdicted at one point. And essentially
22 told -- he's also driving an out-of-state vehicle and he
23 was told to leave. Those are the text messages that you
24 see that were produced in Exhibit 2. All of -- there's
25 a -- when the Court looks through, there's a number of

1 unreadable text messages. It's just gobbledygook. And
2 then there's those two.

3 THE COURT: I saw.

4 MR. KURTZMAN: All of that garbled nonsense,
5 those are all text messages between Greg Gibson and
6 Mr. Faye that were encrypted. So that is how we got them
7 on the electronic portion of the wiretap. I don't know
8 why those two messages did come through. I don't know
9 what happened, but all those other messages from that
10 same number are all Mr. Faye talking to Mr. Gibson, who's
11 on the ground in Texas.

12 As Mr. Faye put -- in this persona of Gunny
13 put himself forward as a leader of the Tennessee group
14 into which he recruited the undercover. So the
15 undercover -- maybe towards the end was authorized to
16 talk directly to Mr. Gibson, but Mr. Faye was that
17 intermediary because Mr. Gibson was the leader of the
18 multistate group and Mr. Faye was the leader of
19 Tennessee.

20 THE COURT: I don't remember any testimony
21 about Mr. Faye's relationship to any larger militia group
22 in Tennessee. Did I -- is my memory faulty or?

23 MR. KURTZMAN: There's testimony regarding
24 the Second American Militia, which is what Mr. Perry and
25 Mr. Odell were part of.

1 THE COURT: Right.

2 MR. KURTZMAN: And we're still investigating
3 who else may or may not be a part of that.

4 THE COURT: Okay. All right. That's fine.

5 MR. BAKER: Your Honor, I want to start out
6 by addressing the timeline, because I don't think it
7 makes a lot of sense. So we've heard testimony that it
8 was an 18-month investigation, so that would put us back
9 in the summer of '22. October of '22, I guess that's
10 what they're referring to.

11 The testimony we heard from this agent today
12 is that he started investigating Mr. Faye around March of
13 '23. And I pointed out there's this six-month difference
14 between October when Perry's arrested in Missouri along
15 with Odell. But the government's -- I mean, they're
16 alluding to he's had communications with them, but we
17 have no evidence of what those communications were or
18 that Mr. Faye was in any way planning to go with Bryan
19 Perry to the border or knew that Bryan Perry would shoot
20 agents.

21 The government assumes that Mr. Faye must
22 have known what happened after Mr. Perry was arrested in
23 Missouri and about the shootout, but we have no evidence
24 of that and I don't think that Mr. Faye did know about
25 that at that time.

1 The government says he could have Googled
2 it, but there's no evidence that he did do so. So we
3 just don't know really what that connection was, if
4 anything. And, you know, it's kind of like we've got
5 some guilt by association going on in this courtroom
6 today. Look at these guys, they shot at agents, as if
7 that somehow proves that Mr. Faye would do the same
8 thing. It doesn't, Your Honor. It absolutely doesn't.

9 I believe Mr. Perry may have a prior
10 criminal record as well, unlike Mr. Faye who's always
11 been a law-abiding citizen. I mean, if Mr. Faye was
12 going to go to the border during this 18-month
13 investigation, the government -- we've learned that he
14 had an automobile that worked before it broke down after
15 the wreck in January of this year.

16 He could have gone to the border armed with
17 these guns that apparently belong to his family that are
18 found in the trailer, but he didn't go. There's no -- he
19 didn't go to Texas, he didn't go to North Carolina, he
20 didn't go to Missouri, he didn't go anywhere. He hasn't
21 done anything, other than run his mouth.

22 We know that Mr. Faye suffers some mental
23 health issues. It's the kind of mental health issues
24 that make people delusional. People that have mental
25 health issues sometimes talk out of their you-know-what

1 and say things they don't necessarily mean, especially if
2 they're getting ginned up and jazzed up by undercover
3 agents who are desperate to somehow make a connection
4 here and talk to a man who's mentally ill and get him to
5 say things that make it seem like he's dangerous.

6 But there's no proof that he would have
7 actually done any of these things, Your Honor. And I've
8 heard this Court say many times, the best way to judge
9 somebody's future behavior is to look at their past
10 behavior. A man with no record of violence, who's a
11 peaceful man, who's loved by his family, they all say
12 he's peaceful, he's not violent. And he's never been
13 charged with anything violent, much less convicted. So
14 that's who stands before this Court today.

15 Your Honor, the 3142 factors weigh strongly
16 in favor of release in this case. In determining whether
17 a person has been released, we've got to look at the
18 nature and circumstance of the offense charged. What
19 we're charged with is a regulatory offense, failure to
20 register a suppressor.

21 Now, the government will argue that the
22 offense does involve a firearm. A firearm is a -- a
23 suppressor is defined as a firearm and the government has
24 produced a report stating that that device is a, quote,
25 suppressor.

1 The weight of the evidence against the
2 person. It's the weight of the evidence of
3 dangerousness. The only evidence of dangerousness are
4 the rantings of a mentally ill man. Not a single witness
5 can come forward before this Court and point to any
6 actual evidence that Mr. Faye was going to participate in
7 trying to harm agents or immigrants at the border.

8 Now, as far as the border goes, Your Honor,
9 as far as I know, it's not illegal to go down to the
10 Mexican border. In fact, I believe there's other militia
11 groups -- the news reports that there are militia groups
12 at the border now. The issue is, what's legal and what's
13 not legal.

14 Sounds like they've arrested somebody at the
15 border in one of these militia groups because they found
16 out he was a prohibited person. But there's plenty of
17 law-abiding American citizens who are upset about what's
18 going on at the border who think that they should go and
19 help law enforcement, or if there is a terrorist attack,
20 help defend the country.

21 Now, when you go through the statements he
22 makes that are in the line sheets, as well as the
23 complaint, I would ask you to consider, Your Honor, that
24 a delusional man with mental health issues who's
25 listening too much to certain individuals and their

1 overheated rhetoric in the news media about the border
2 and about the invasion that's happening to this
3 country -- Senator Marco Rubio was on the news yesterday
4 morning talking about it's the Democrats' plan to bring
5 immigrants from the border to turn them into voters for
6 the government and they're going to take away this
7 country and that they're bringing a socialist government
8 to this country. That's what this man's listening to and
9 getting himself all worked up and jazzed up because he
10 doesn't understand it.

11 We know that's not what's really going on.
12 We have a humanitarian crisis at our border. Mr. Faye is
13 a loyal American. It may very well be that what he's
14 talking about is going to assist law enforcement if there
15 is a terrorist attack across the border. That's what he
16 thinks is going to happen.

17 And how do we know that, Your Honor? Think
18 about the words that were used on the audio recording of
19 Mr. Faye talking to the undercover that we heard today.
20 At one point the agent says something about, yes, there's
21 going to be terrorism. He says, no, the terrorists are
22 going to come across the border. The agent's trying to
23 get them to say that they're going to be the terrorist
24 shooting people coming across the border. Mr. Faye's
25 trying to tell him that if we don't control this border,

1 terrorists are going to come across it to commit jihad or
2 to attack this country.

3 Your Honor, this is a man who's always been
4 a law-abiding citizen, who's never carried out a violent
5 act, who has some delusional beliefs based on political
6 issues that are going on. He doesn't need to be locked
7 up in a jail.

8 Your Honor, we're certainly going to have
9 him evaluated. We hope that we can have him evaluated
10 while he's on release in this case living in Cunningham,
11 Tennessee. There's no more weapons out there, the
12 government's taken them all. There are conditions that
13 can assure his appearance in this courtroom.

14 The next factor, history and characteristics
15 of the person, the person's character. You've heard
16 about all the good things that he's done. This is not a
17 bad man.

18 His physical and mental condition. A man
19 with mental health issues. Family ties, strong family
20 ties, community ties. Past conduct. Whether at the time
21 of the offense he was on probation or parole; he's not.

22 The nature and seriousness of the danger to
23 any other person. Your Honor, if the government was
24 worried about the safety of the community, they've done a
25 good job. They've arrested Mr. Faye. And now we can all

1 be assured. But he doesn't have to continue to be locked
2 up. As I said before, if he wanted to travel to the
3 border and commit acts of violence, he certainly had the
4 last -- at least since March of '23 when they started
5 talking to him to do it.

6 Then if the government was really so
7 concerned that this was an imminent danger, this
8 telephone call they played for you today was on
9 January 22. And I submit to you that when Paul Faye said
10 I'll go out with blood on my body the way I came in, he's
11 talking about if there's a war that he gets involved in,
12 in his delusional mind, because terrorists are coming
13 across the border.

14 From November -- from January 22 till
15 November 5 (sic), 16 days. Doesn't seem like such an
16 imminent threat. They let him stay in the community for
17 16 days. The reason is it wasn't an imminent threat
18 because he's not an imminent threat. He's not going to
19 do anything if you release him, Your Honor, except comply
20 with the rules of his release, take his medication and
21 stay out of trouble.

22 Your Honor, I'd respectfully submit that the
23 conditions that can assure both the safety of the
24 community and his appearance are strict conditions.
25 Electronic monitoring. We'll know where he is. I

1 understand your concerns about Rita Pepper not knowing
2 everything that he's doing. But Rita Pepper is a good
3 third-party custodian because she will report him if he
4 messes up. If he leaves that property, she'll report
5 him. If he does what he's not supposed to do, she'll
6 report him.

7 Electronic monitoring, we can be assured of
8 where he is. The fact is that all the weapons are gone
9 and we can be assured that they will be fine. The
10 probation officer can go to the property and search it if
11 they want to.

12 He needs to continue, as a condition, with
13 community mental health treatment. Your Honor could also
14 order him to stay off of social media, particularly
15 TikTok.

16 Paul Faye has never been in jail before,
17 Your Honor, and this last week has been really hard on
18 him. The jail doesn't give him the medication the way
19 they're supposed to. Being in jail is really tough for
20 someone that's never done it before. This is not a man
21 that needs to be locked up.

22 So, Your Honor, we respectfully request that
23 the Court find that the factors weigh in favor of release
24 and release Mr. Faye. And I feel confident that the
25 Court can be assured that the community will be protected

1 and Mr. Faye will appear and will apply -- comply with
2 his conditions of release.

3 MR. KURTZMAN: Just a couple things,
4 Your Honor.

5 Mr. Baker referenced the tie between
6 Mr. Faye and Mr. Perry. We know about that -- the tie
7 between them because it was in Mr. Perry's phone, and
8 that's what led to the initiation of the investigation
9 into Mr. Faye is because they'd been plotting and
10 planning together to go to the border --

11 MR. BAKER: Objection, Your Honor. We
12 know -- something's in his phone? There's no evidence
13 that he was plotting with Perry.

14 THE COURT: He's arguing. I'll let him
15 argue, and I'll give it the weight it's worth.

16 MR. BAKER: Yes, Your Honor.

17 MR. KURTZMAN: Your Honor, the FBI doesn't
18 open domestic terrorism investigations into individuals
19 just because they're in someone else's phone. They open
20 an investigation because he was plotting to go to the
21 border with Mr. Perry and Odell. He had met with them
22 beforehand, and they were planning to go down until
23 Mr. Perry and Mr. Odell shot law enforcement.

24 Mr. Baker talks about other militias at the
25 border. He's right, there are other militias down there.

1 All of them have told Gibson he's too violent to be a
2 part of their legitimate militia. Property owners along
3 the border allow these militias to come and stay on their
4 property.

5 And Gibson has been told by those somewhat
6 legitimate law-abiding militias that are helping people
7 down there that Gibson is not to come. He's not to stay
8 with them. He's not to associate with them. It's
9 because they're advocating for violence, they're not
10 advocating for the protection of our border. Mr. Faye
11 and others are advocating for violence.

12 And then Mr. Baker says, he could have gone
13 to the border any time over the course of this 18 months.
14 Well, he's plotting in '22. His friends went to jail.
15 Didn't do anything for a few months. And then in March
16 he starts talking to the undercover and starts planning
17 again.

18 When the FBI wiretap began, we knew the
19 defendant and Mr. Gibson had selected a date for which
20 they were going to go to the border. Massive ice storm
21 hit the Middle District of Tennessee and it hit
22 North Carolina, and it pushed those plans. Mr. Gibson
23 went on a recon visit. He was planning to go to the
24 border. He was planning to go to the border with
25 Mr. Gibson right about the time he was arrested,

1 Your Honor.

2 Gibson had selected dates and Faye said he
3 would go just as soon as his truck was ready to go. And
4 the quotes -- it's in Exhibit 2, you can read it, he's
5 talking about people that he believes are federal agents
6 surveilling him and his quote is: All I can tell you,
7 all I can tell you is if they come, they better come
8 fucking hard. They better come ready because I am. The
9 undercover responds, yeah.

10 And then Faye says: I'm not saying I can
11 beat them all, but I guarantee you I'll put enough of
12 them down. I've had enough of their bullshit. He's
13 talking about law enforcement, Your Honor.

14 It could be related to mental health, but
15 the proposed plan for his release doesn't account
16 adequately for the mental health concerns that Mr. Baker
17 has raised and may or may not be present. What we can
18 see in black and white is exactly what the defendant said
19 he planned to do and exactly what he was prepared to do
20 when he got there and what he would do to federal law
21 enforcement if encountered.

22 The proposed conditions don't account for
23 that. The Court looks at would it be safe for a
24 probation officer to go visit someone who's expressed
25 these feelings about federal law enforcement. And the

1 answer is no. Are there conditions that could safeguard
2 against that? I believe the answer again is no and would
3 ask the Court to detain Mr. Faye pending trial. Thank
4 you.

5 THE COURT: Let me just clarify one thing.
6 I think that you said the danger to the community of
7 Mr. Faye's release would be that he would engage in
8 another conspiracy like the two he'd previously engaged
9 in to eventually get to the border and take some
10 nefarious actions against migrants and law enforcement
11 there. Is that -- is that the danger that I need to
12 protect the community from?

13 MR. KURTZMAN: That's one of them,
14 Your Honor. Also if you look at Exhibit 2, there's ample
15 evidence of him talking about looking for targets in the
16 Tennessee area. He talked about Knoxville and Memphis in
17 Exhibit 2 about how they need to find where they're
18 shipping the migrants there, because in his mind he
19 believes the fight against these migrants is coming to
20 Tennessee as well.

21 And he expresses that to the undercover as,
22 we may not even need to go to Texas. We may be able to
23 target these people here at processing facilities. So
24 that's another one of the dangers is he now believes that
25 he can commit acts against these migrants who he believes

1 are an army recruited by the Biden administration, he can
2 commit acts of violence against those people here.

3 The thing is -- or scary thing is he has no
4 way of identifying who is a migrant. He just doesn't.
5 He told the undercover that the guy who hit his truck is
6 an illegal. And that's one more reason why he hates
7 illegals. The guy who hit his truck is a life-long
8 resident of the state of Tennessee named Wayne. But he
9 sees targets everywhere.

10 MR. BAKER: I have to object to the
11 testifying without evidence that the government is doing.

12 THE COURT: Well, they admitted the line --
13 I admitted the line sheet in total in this case. So
14 he's --

15 MR. BAKER: I don't think he's referring to
16 the line sheets. I think what he's now saying is beyond
17 that, is it not, Your Honor?

18 MR. KURTZMAN: The Knoxville and Memphis
19 piece? No, it's directly in there in the call that
20 starts on page 12.

21 THE COURT: Are you talking about the Wayne
22 business, though? Is the Wayne business in the line
23 sheet? I just assumed you were referring to things in
24 the line sheet because I know that Knoxville and
25 Memphis --

1 MR. KURTZMAN: That individual is not
2 mentioned anywhere, other than the defendant refers to
3 him as an illegal.

4 THE COURT: Okay.

5 MR. BAKER: I thought you just testified
6 that he was upset because an illegal hit him in his car.

7 THE COURT: Yeah, that's what you just said.

8 MR. BAKER: Is that in the line sheet?

9 THE COURT: The line sheet -- as I
10 understand what you just told me in the line sheet is he
11 thought an illegal's who hit him, and you said it wasn't
12 actually an illegal. It was a guy who lived here all his
13 life named Wayne.

14 MR. KURTZMAN: And it's not a critical
15 point. The point is the Court was asking me about what
16 the dangers were that you needed to protect against.

17 THE COURT: Yeah.

18 MR. KURTZMAN: And Your Honor said that it
19 was him going to the border and committing acts of
20 violence. And I'm submitting that it's not. He now sees
21 targets here, amongst those who live in Tennessee. He
22 sees federal law enforcement as a target. I don't know
23 if that extends to all law enforcement, but after an
24 arrest and a search of his property, that's a reasonable
25 conclusion to draw to, that he would have strong negative

1 feelings toward any member of law enforcement. And would
2 submit that no conditions can protect the public from
3 those dangers.

4 THE COURT: All right. Thank you.

5 All right. First of all, I want to take a
6 minute just to thank the lawyers for their efforts.
7 Appreciate the hard work and advocacy by each of you.
8 It's important in our system to have strong advocates who
9 are able to articulate their positions, and I think you
10 both did an excellent job of that. And it makes the job
11 of the Court more difficult, but it's also important for
12 the system to work as it should to have strong advocacy
13 on both sides of an issue.

14 I also want to take a minute just to
15 acknowledge and thank all those folks who have come to
16 court today to be here in support of Mr. Faye. I
17 recognize folks that have been here, I think Mr. Baker
18 introduced most of you along the way. Especially want to
19 thank the Luebkes and Ms. Pepper for your testimony and
20 for your willingness to assist the Court in this matter.

21 You know, there are a lot of people who come
22 to this courtroom who don't have anybody who's willing to
23 be there for them, who's going to support them no matter
24 what happens. And so I know there's just about anywhere
25 else in the world y'all would rather be on a Monday than

1 sitting in a federal courthouse. But it means something
2 to me that you-all made the effort and took the time to
3 be here.

4 And so I just want you to know I acknowledge
5 that and appreciate that. I suspect that my appreciation
6 pales in comparison to Mr. Faye's appreciation that he
7 knows you-all are here for him no matter what happens.

8 With respect to the issue of probable cause,
9 the government's burden to establish probable cause at a
10 preliminary hearing is relatively low. Probable cause is
11 a reasonable ground for belief supported by something
12 less than prima facie proof but more than just a mere
13 suspicion.

14 The job of the Court is to examine whether
15 probable cause exists, which is more than just a rubber
16 stamp. In this situation the Court's heard the proof on
17 this matter with respect to the charge that the
18 defendant's been arrested for. I'm satisfied that the
19 government's met its burden with respect to the charge in
20 the criminal complaint, and I'll make that finding at
21 this time.

22 With respect to the issue of detention, the
23 Bail Reform Act ordinarily requires that a defendant be
24 released pending trial unless there are no conditions
25 that will reasonably assure the appearance of the person

1 at future court proceedings and the safety of the
2 community.

3 The Court's to consider a number of factors,
4 including the nature and circumstances of the offense
5 charged, the weight of the evidence against the
6 defendant, the history and characteristics of the
7 defendant and the nature and seriousness of the danger
8 posed by the defendant's release.

9 In our society, liberty is the norm and
10 detention prior to trial or without trial is the
11 carefully limited exception. and the Court's mindful of
12 the tension between the Bail Reform Act and the
13 presumption of innocence that applies to Mr. Faye and all
14 other individuals who are accused of crimes in this
15 court.

16 As I note, there are two considerations that
17 I have to take into account. The first relates to
18 nonappearance or flight. I don't think that the issue of
19 flight in this case was seriously argued, but Mr. Faye
20 has long ties to this community. He has a number of
21 folks, as I've already indicated, who are here today to
22 support him.

23 I heard the testimony of his daughter and
24 son-in-law and ex-wife about their willingness to assist
25 the Court and about the nature of their relationship and

1 his ties to the community. And I don't believe that
2 there's a serious risk of nonappearance in this case.

3 To the extent there is any concern about
4 nonappearance, based upon the allegations or the charge
5 in this case, I'm satisfied that there are conditions of
6 release that would reasonably assure his appearance at
7 future court proceedings. So I will not detain him based
8 on a risk of flight in this case.

9 With respect to the risk of dangerousness,
10 in order for a defendant to be preventatively detained,
11 the Court must identify an articulable threat posed by
12 the defendant to an individual or the community. And
13 while that threat need not be one of physical violence,
14 it must be clearly identified. The threat's to be
15 considered in context, and determination regarding
16 detention must be made on an individual basis.

17 And then the final analysis must be based on
18 the evidence before the Court regarding the particular
19 defendant, and whether a defendant poses a particular
20 threat depends on the nature of the threat identified and
21 the resources and capabilities of the defendant.

22 In this case, as Mr. Kurtzman articulated in
23 his argument, the danger to the government that the
24 Court's identified -- or rather that the government's
25 identified and argues warrants detention in this case is

1 the concern about Mr. Faye's alleged involvement in
2 multiple conspiracies to travel to the southern border
3 and engage in illegal conduct and dangerous conduct
4 directed toward migrants generally and border agents or
5 other law enforcement in the area.

6 Additionally, based upon the alleged
7 statements of the defendant, the government also has
8 expressed concern that his release would pose a danger to
9 the community with regard to the possibility that such
10 attacks might occur locally, and specifically Memphis or
11 East Tennessee, and that if Mr. Faye were to encounter
12 law enforcement in the future, that that conduct might
13 result in harm or danger to law enforcement under those
14 circumstances.

15 The Court's heard the evidence in this case,
16 and specifically heard the statements of the defendant in
17 speaking with the confidential informant and finds that
18 the statements made by the defendant and his alleged
19 conduct in this case would create a danger to the
20 community for the reasons that the government articulates
21 with regard to the concerns about his statements and his
22 ability to act on those statements.

23 However, that's not the end of the inquiry.
24 The Court must determine, having made that finding,
25 whether there are conditions that will reasonably assure

1 the safety of the community. And that's really where
2 this case ultimately has to be resolved is whether or not
3 there are conditions that will reasonably assure the
4 safety of the community.

5 I think Mr. Baker makes some really salient
6 and good points with regard to the nature and
7 circumstances of the offense and the weight of the
8 evidence of dangerousness in this particular case. This
9 alleged threat or conspiracy, if you will, goes back,
10 according to the government, 18 months. I think that
11 there have been lots of opportunities for Mr. Faye to act
12 on these alleged beliefs.

13 And while he's continued to engage in this
14 kind of rhetoric and dialogue, the Court's not been
15 presented with any real evidence that he's taken
16 substantial steps toward accomplishing those things.
17 There may be beliefs or ideas or suspicions about that,
18 but, again, as Mr. Baker points out, we've got 18 months
19 of a whole lot of talking and not a whole lot of acting.
20 And so I think that that's an important consideration.

21 I think that the other piece to this that is
22 significant is what the role of the mental health issues
23 play in the decision as to whether or not there are
24 conditions that will reasonably assure the safety of the
25 community. The mental health issue, I think, is

1 certainly argued by the parties in two different ways. I
2 think that the testimony of the witnesses and Mr. Baker's
3 argument suggests that his mental health issues are a
4 mitigating factor; while the government argues that they
5 are more of an aggravating factor.

6 Mr. Baker pointed out that folks with mental
7 health issues can sometimes say things that are really
8 off the wall -- it's not exactly what Mr. Baker said, but
9 that's the gist, I think. But what Mr. Baker doesn't
10 mention is the fact that mental health issues can often
11 cause people to do things that are off the wall and out
12 of the ordinary. And so that's the real concern I have
13 in this case. I think candidly that if -- if it wasn't
14 for the evidence about the defendant's mental health
15 issues, this might be a tough case for detention because
16 we've got 18 months of nothing. And certainly in that 18
17 months there have been lots and lots of opportunity.

18 But for the Court the way the mental health
19 issue plays into this equation is that the mental health
20 issues make it more unpredictable and unreliable to
21 predict what reaction Mr. Faye is going to have to these
22 situations. And the timeline of 18 months is in some
23 ways less significant to me in terms of analyzing the
24 condition of release issue than the timeline of November
25 to February the 5th.

1 I've got the testimony from Ms. Luebke about
2 her concerns escalating to the point where she had
3 Mr. Faye committed. He was in a facility for a period,
4 he was diagnosed, he was put on medication, and then
5 returned home. And during that time that he returned
6 home, it appears that maybe his firearms were taken from
7 him for a period of time but then returned to him.

8 And we've heard the statements about the
9 existence of this black vehicle and his concerns around
10 that. We've also heard from the government that there
11 was no active surveillance of him at that time. And that
12 sounds more consistent with what Ms. Luebke was talking
13 about in terms of him saluting trees and having these
14 conversations with imaginary people and things of that
15 nature, which suggests to me that maybe he had some sort
16 of a further break or some sort of a further issue after
17 his initial hospitalization.

18 And so I think that this issue of managing
19 his mental health is not as easy as it may appear to be.
20 It seems like it's a real challenge. Again, that's also
21 consistent with the government's position about why they
22 went forward in the manner in which they did based upon
23 the changing nature of his dialogue in conversations, all
24 of which, again, suggests that there was some sort of an
25 ongoing mental health issue that may have been getting

1 worse rather than better following that hospitalization.

2 And so I have to ask, then, about these
3 conditions that the defendant suggests would be
4 appropriate in this case and whether they would
5 reasonably assure the safety of the community. And the
6 conditions are essentially that he be on electronic
7 monitoring; that there be strict conditions; that
8 Ms. Pepper serve as a third-party custodian; that he
9 receive mental health treatment; and that he be
10 prohibited from accessing social media.

11 And I think that, again, having heard the
12 proof, I'm a little bit concerned about the efficacy of
13 those particular conditions as it relates to the mental
14 health issues. Again, like the government, I have
15 absolutely no issue with Ms. Pepper or Ms. Luebke's
16 commitment here and their desire and willingness to be
17 helpful to Mr. Faye to address his mental health
18 conditions. But I am concerned about their ability to do
19 so in an effective way.

20 Ms. Luebke is going to be at least 45
21 minutes away. She's going to -- indicated she would do
22 what she could to assist. She'd visit when she could,
23 she'd call to make sure that her mother was doing the
24 things that she agreed to do and that sort of thing. And
25 Ms. Pepper has indicated that she would do what she could

1 as well. And it's not in any way a criticism or critique
2 of either of them or their willingness or good faith
3 about what they want to do, but I'm not sure that I'm
4 satisfied that it's sufficient under the circumstances.

5 And those circumstances being that
6 notwithstanding this 18-month period of time when the
7 government alleges Mr. Faye was so obsessed with this
8 issue and he was communicating with multiple individuals
9 on multiple occasions about these topics, he was clearly
10 engaging with social media and other types of media to
11 determine information about politics, nobody in the
12 family seemed to know that was going on.

13 And, again, it's not a criticism of them.
14 It's understandable, particularly Ms. Pepper. I mean,
15 she's in a really difficult situation with her ex-husband
16 and living in the same property. And it's understandable
17 that she wouldn't -- No. 1, she said she's not interested
18 in those things. And No. 2, she's not going to want to
19 get all up in his business about what he's thinking about
20 or what he's interested in and that sort of thing.

21 But, again, my concern is that if Mr. Faye's
22 mental health issues start to rise to the surface again
23 and he's -- it's just not realistic to think that I can
24 keep him 100 percent isolated from any of the issues that
25 are going on in the world, whatever the source is,

1 because it's so ubiquitous.

2 It's one of the real issues that we have is
3 the rhetoric, the political rhetoric that so often veers
4 toward imagery of war and conflict and fighting and those
5 sorts of things. And there's some people who can accept
6 that as political rhetoric and they don't think anything
7 more of it or they don't want to engage in it.

8 But there are other folks like Mr. Faye,
9 apparently, who have that predisposition where they're
10 going to hear that in a different way than other people
11 did. And it's clear based upon the arguments that have
12 been made by Mr. Baker and the statements that have been
13 made by the witnesses in this case, that Mr. Faye is
14 susceptible to those things.

15 And Ms. Pepper, understandably, is not
16 really in that good of a position to be able to address
17 those matters or deal with those matters if they come up.
18 And it's not really fair to her to put her in that
19 situation. She's not a mental healthcare professional,
20 she didn't have that training, she doesn't have that
21 expertise. And we've got a track record of Mr. Faye
22 keeping that information from her to begin with.

23 So I'm not really sure how we're going to
24 sprinkle the magic dust and all of a sudden now the
25 family who's made all these efforts and done the best

1 they can in the past and we still are where we are, I'm
2 going to be able to have confidence that we can
3 reasonably assure that those things won't happen in the
4 future.

5 And given the nature of the threats here,
6 given the nature of the danger that those situations
7 create, given the type of obsession that we've seen
8 Mr. Faye be able to have with these things and the fact
9 that none of these conditions, in my mind, would
10 reasonably assure that he wouldn't have those same
11 thoughts and wouldn't be in a position to be able to act
12 upon those things and given the unpredictability of his
13 mental health issues, I think create a greater danger
14 than they would in someone who didn't have those mental
15 health issues.

16 I'm just not satisfied that there are
17 conditions that will reasonably assure the safety of the
18 community. And for those reasons, I'm going to grant the
19 government's motion and order that Mr. Faye remain
20 detained.

21 I am very concerned about his medication.
22 Mr. Kurtzman -- I'll say this aloud for the marshals as
23 well. We're not going to be able to do much about mental
24 health treatment while he's in custody. But he needs to
25 be getting his medication. And if there continue to be

1 issues with that, Mr. Baker, I expect you'll bring those
2 back to me and I'll do what's necessary to make sure that
3 that happens.

4 MR. BAKER: Yes. I communicated with the
5 marshals last week on a daily basis. I'm going to -- I'm
6 sure Mr. Withers will not be happy, but I'm going to let
7 him know again that it's still a problem and that he will
8 bring it -- I will also bring it to the Court's attention
9 if he's not getting his medication.

10 THE COURT: All right, very good. Thank
11 you.

12 Mr. Kurtzman, is there anything further from
13 the government's standpoint we need to address this
14 afternoon?

15 MR. KURTZMAN: No, Your Honor.

16 THE COURT: Mr. Baker, anything else for
17 your client today?

18 MR. BAKER: No, Your Honor. Thank you.

19 THE COURT: All right. Thank you all very
20 much. We'll be in recess. Good luck to you, Mr. Faye.

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That I transcribed from **electronic recording**
the proceedings held on February 12, 2024, in the matter
of UNITED STATES OF AMERICA v. PAUL FAYE, SR., Case No.
3:24-mj-1036;

This is the 8th day of April, 2024.

s/ Roxann Harkins
ROXANN HARKINS, RPR, CRR
Official Court Reporter